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The situation in Central America: procedures for the establishment of a firm and lasting peace and progress in fashioning a region of peace, freedom, democracy and development

United Nations Verification Mission in Guatemala

Note by the Secretary-General**

1. The attached document contains the report on human rights of the United Nations Verification Mission in Guatemala (MINUGUA) on the verification of compliance with the Comprehensive Agreement on Human Rights (A/48/928-S/1994/448, annex I). In accordance with the practice established since the Mission's inception, I shall transmit a copy of the report to the United Nations High Commissioner for Human Rights, with the request that it be brought to the attention of the members of the Commission on Human Rights.

2. The report, transmitted by the Head of Mission, is the twelfth on the subject and covers the period from 1 July 2000 to 30 June 2001, during which the Mission continued to carry out its work and to verify compliance with the commitments contained in all the peace agreements. The results of such verification were reported to the General Assembly on 1 June 2001 (see A/55/973).

3. In my report to the General Assembly (A/55/389), I conveyed the request of the signatories to the peace agreements that the Mission's mandate should continue. The mandate was renewed until 31 December 2001 by resolution 55/177 of 19 December 2000, in which the General Assembly reiterated to me its request to keep it fully informed.

4. I should like to thank the Government of Guatemala and the Unidad Revolucionaria Nacional Guatemalteca (URNG) for their cooperation with MINUGUA, without which the Mission would have been unable to function. Lastly, I wish to express my gratitude for the ongoing cooperation and support provided for the Mission and the Guatemalan peace process by the Member States and the United Nations system in Guatemala.

* A/56/150.
** The footnote requested by the General Assembly in its resolution 54/248 was not included in the submission.

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Annex

Twelfth report on human rights of the United Nations Verification Mission in Guatemala

I. Introduction

1. During the period from 1 July 2000 to 30 June 2001, the United Nations Verification Mission in Guatemala (MINUGUA) continued to verify compliance with the peace agreements signed between the Government of Guatemala and the Unidad Revolucionaria Nacional Guatemalteca (URNG), including the Comprehensive Agreement on Human Rights (A/48/928-S/1994/448, annex I) and the human rights aspects of the Agreement on Identity and Rights of Indigenous Peoples (A/49/882-S/1995/256, annex).

2. By its resolution 55/177 of 19 December 2000, the General Assembly authorized the renewal of the Mission's mandate until 31 December 2001 and, in view of the persistent shortcomings in the overall human rights situation, encouraged the Government to implement the recommendations contained in the Mission's previous reports on human rights. The Mission emphasizes the importance of the enjoyment of human rights as a key aspect of the frame of reference for evaluating progress in the peace process as a whole. Evaluation of the human rights situation in Guatemala covers not just quantitative but also, and more importantly, qualitative aspects.

II. Analysis of the commitments made in the Comprehensive Agreement on Human Rights

Commitment I: General commitment to human rights

3. During the period under review, 352 complaints involving 3,986 alleged violations of rights accorded priority under the Comprehensive Agreement were admitted, and the existence of 4,821 violations reported during that period or previous periods was confirmed (see appendix).

4. Although in 1998 the United Nations Commission on Human Rights concluded that institutionally there no longer existed an established State policy that violated human rights in Guatemala, Guatemalans feel that the enjoyment of their rights remains precarious because the State has failed in its duty to safeguard them.

5. A key aspect of this situation is that, as a general rule, the State's institutional response to crimes and violations is neither timely nor effective. Despite the Government's repeated assertions that it is willing to promote a human rights agenda, institutional shortcomings and lack of coordination among the National Civil Police (PNC), the Public Prosecutor's Office and the judiciary persist. Inaction or insufficient action on the part of the State causes delays and impunity. One example is the complaints of harassment, threats or attacks against human rights defenders, members of the judiciary and journalists. Lynchings and so-called "social cleansing" operations are another example of the State's failure to prevent, investigate and punish.

6. Following the mass escape from Escuintla maximum security prison in June 2001 (see para. 52), the Government's decision to declare a one-month "state of alert", for which provision is made in the Constitution of Guatemala "in the event of invasion of the national territory, serious disturbance of the peace, activities against the security of the State or public disaster", was evidence of its failure to adhere strictly to the priority of protecting and safeguarding the rights of the population as a whole.

7. In the Comprehensive Agreement, the parties requested that verification pay particular attention to the rights referred to in this section. At the same time, the other peace agreements contain commitments whose fulfilment would enhance the situation of other human rights, for instance, economic, social and cultural rights, especially for the most marginalized sectors of the population, such as indigenous people and women. Accordingly, the Mission is concerned that lack of progress in implementing the peace agreements as a whole may be affecting the enjoyment of those rights.

Right to life

8. During the period under review, 39 complaints involving 85 alleged violations were admitted, and 22 extrajudicial executions and 13 attempted executions were confirmed. There was an increase in the involvement of municipal authorities, especially auxiliary mayors, who were responsible for the bulk of confirmed violations, and of former members of the Voluntary Civil Defence Committees (CVDCs), who were mainly responsible for lynchings. Members of the armed forces were found responsible for two extrajudicial executions and members of the National Civil Police were found responsible for seven extrajudicial executions and six attempted executions.

9. Lynchings seriously affect the right to life and occur mainly in communities most affected by the armed conflict. Municipal authorities, former CVDC members or military commissioners have often been the instigators, as illustrated by the following case: on the morning of 8 July 2000, nearly 2,000 men from various communities around Xalbaquiej, Quiché, ambushed alleged members of a criminal gang. Eight people were beaten and burnt to death. Several instigators and perpetrators were former CVDC members; some of them were auxiliary mayors at the time and another was working in a municipal corporation.

10. The case of two extrajudicial executions in which there is strong evidence of the involvement of members of the armed forces is especially serious. On 25 May 2000, men in army uniform, armed with rifles and driving a Military Zone 12 military vehicle, arrested Oscar Guzmán García and José Castañeda Alvarez. Between 28 and 29 May, two human heads were found on the banks of the Guacalate river. On 31 May, two decapitated bodies were found on the Alsancia estate in Escuintla. The heads and bodies were found to be those of Guzmán and Castañeda. According to the forensic report, the heads had bullet wounds and the bodies had stab wounds. The region's military authorities gave no information to the Mission and the National Defence General Staff provided information 11 months later. Neither the PNC Criminal Investigation Service nor the Escuintla prosecutor's office investigated the possible involvement of military personnel.

11. On 28 January 2001, Luis García Pontaza was found dead in the Zone 18 jail in the capital city. He had been linked to organized crime and proposed as a witness for the defence in the Monsignor Gerardi case (see A/53/853, annex, paras. 8, 14, 30 et seq). Before his death, he had told the Mission that he had resisted pressure from the Presidential General Staff and the Public Prosecutor's Office (during the investigation of former prosecutor Otto Ardón) to implicate persons connected with the Catholic Church in Monsignor Gerardi's murder, in return for impunity for his criminal activities. On 8 June, the Third Trial Court convicted agents and former agents of the State of Monsignor Gerardi's murder and determined that the murder had been a political crime. The sentence contains a direct reference to the existence of a modus operandi, tolerated and abetted by State structures, in the planning, execution and subsequent cover-up of Monsignor Gerardi's murder.

12. There have been further cases of executions by members of the National Civil Police, in which the pattern described previously (see A/55/174, annex, para. 19) has been repeated: deaths resulting from the excessive use of force or the illegal use of regulation firearms; persons found dead after being arrested and held in custody; and the alteration of facts in police reports to cover up for the perpetrators.

13. On 25 October 2000, in Gualán, Zacapa, Rolando Barillas Herrera was arrested by two police officers, taken to the police substation and placed in a cell at midnight. Around five o'clock in the morning, a police officer found him dead, apparently hanged. The forensic report ruled out the possibility of suicide. According to the evidence, Barillas was beaten severely and, when he was close to death, he was suffocated to make it look like a suicide. The investigations by the Criminal Investigation Service, the PNC Office of Professional Accountability and the Public Prosecutor's Office have not identified the culprits.

14. On 8 April 2001 in Quetzaltenango, the police caught Julio Alberto Cassola and William Cotom Rodas in the act of stealing a vehicle. They were arrested and taken to the premises of the Criminal Investigation Service, where they were tortured to obtain information about assaults. Although Cassola was seriously hurt, they were both transferred to jail. Early the next day, Cassola was taken to the regional hospital, where he died on 11 April as a result of the beating he had received.

15. A number of relatives of General (ret.) Otto Pérez Molina, who had been a member of the Government delegation that signed several of the peace agreements and who was about to declare himself publicly as the leader of a new political party, were the victims of firearms attacks in Guatemala City over a period of three and a half months. On 11 November 2000, an unknown assailant fired at the General's son from a vehicle, wounding his wife. The Public Prosecutor's Office and the National Civil Police showed little willingness to investigate the incident. On 21 February 2001, the General's daughter was attacked and wounded in the arm by unknown armed assailants. Minutes later, another group of armed assailants attacked the car of Miriam Patricia Castellanos, killing her. The General's wife was in her car a few metres from the victim's car and the assailants supposedly mixed up the two vehicles. The Mission has learnt that a specialist from the National Defence General Staff was in his vehicle behind the victim and witnessed the incident, but he has yet to make a statement to the competent authorities and the National Defence General Staff is carrying out its own investigation without any judicial oversight. As a result of these violent incidents, the General's family left the country.

16. On 5 May 2001, Francisco Arnoldo Aguilar, the widower of Miriam Patricia Castellanos, was murdered in his car outside his home by two unknown assailants. The circumstances rule out robbery as the motive. The victim had dedicated his efforts to shedding light on his wife's death and was advocating the creation of a citizens' group against violence and impunity. The Mission encountered difficulties in verifying whether there was due process in this case, but confirmed that the authorities were insisting on linking it to ordinary crime and ruling out political motives.

17. Since December 1996, 78 people have been sentenced to capital punishment. Three have been executed, 28 have appeals pending and 43 have had their sentences repealed. Of the latter, 33 were given prison sentences, eight are awaiting a new trial and two were acquitted. Four convicts lost their lives in the mass escape from Escuintla maximum security prison. The Mission verified violations of minimum judicial guarantees in the trials of Fermín Ramírez and two members of the former National Police, whose trials have reached the stage of enforcement of sentence. Applying the death penalty in these circumstances constitutes summary execution.

18. Of the 28 people whose death sentences remain in effect, 13 were sentenced for kidnappings in which the victim was not killed, a crime that was not subject to capital punishment before the entry into force of the American Convention on Human Rights which prohibits the extension of the death penalty to other crimes. In October 2000, the Constitutional Court ruled that the laws imposing the death penalty for kidnappings where the victim is not killed, which were enacted after the entry into force of the American Convention, are incompatible with the Convention and with article 46 of the Constitution, which gives human rights treaties precedence over ordinary law. Despite this, the Criminal Division of the Supreme Court has maintained the opposite doctrine.

19. On 28 June 2001, the Constitutional Court, with new members, reversed its ruling favourable to the American Convention by rejecting the remedy of *amparo* lodged on behalf of Ronald Raxcacó Reyes, stating that the death penalty can be imposed even in cases of kidnapping in which the victim is not killed. The appointment to the Court, as an alternate magistrate, of a lawyer who had previously requested the death penalty in such cases compromises its impartiality. This very unfortunate precedent violates the American Convention on Human Rights and engages the State's international responsibility in this matter.

Right to integrity of person

20. During the period under review, 42 complaints involving 188 alleged violations were admitted, of which 118, committed mainly by members of the police, were confirmed. It is extremely serious that the practice of torture, cruel, inhuman and degrading treatment and ill-treatment persists. The victims are usually young men falsely accused in police reports of causing a public disturbance or brawl under the influence of alcohol; they are arrested at night without a warrant and physically and psychologically abused on police premises.

21. Once such case occurred on 31 July 2000, when PNC officers Arnoldo Alonzo Méndez, Gabriel Ramos Ramírez and Juan Martínez Reynoso, assigned to San Juan Alotenango, Sacatepéquez, arrested José Sánchez Ascencio and took him to the local substation, where they beat him, submerged him in a barrel of water and gave him electric shocks. The next day, after he had been moved to the Antigua prison, the prison governor

ordered his transfer to the local hospital because of the state he was in. The medical diagnosis indicated "intense abdominal pain, blood in the urine and internal trauma to the abdomen". To cover up the incident, the police officers drew up two police reports accusing the prisoner of committing a number of crimes at different times. The PNC Directorate-General ordered the officers' suspension from duty.

Right to liberty and security of person

22. The main characteristic of the period under review has been the large number of complaints of threats, harassment and intimidation against persons and institutions working for the protection of human rights, civil servants, persons involved in judicial proceedings and journalists critical of public authorities. During the period, 112 complaints involving 479 alleged violations were admitted and 303 violations were confirmed.

23. In some cases of intimidation, political motives cannot be ruled out. The office of the former presidential candidate for the Alianza Nueva Nación, Álvaro Colom, was searched between 11 and 12 August 2000. Computers and documents were stolen, while other valuables were left, along with threatening messages. In March 2001, deputies who had resigned from the ruling party to join the Unidad Nacional de la Esperanza, headed by Álvaro Colom, reported having been subject to threats and intimidation.

24. Two cases of enforced disappearance — one of the most serious violations of human rights — reported in earlier periods were confirmed. One is that of Santos Hernández Suchite, which occurred in Nueva Jerusalén II, La Libertad, Petén. On 20 December 1999, the local auxiliary mayor, Cruz Hernández, accompanied by six other men, arrested the victim in his home, claiming that he had a warrant for his arrest and was going to hand him over to the courts. The victim's whereabouts are still unknown. His captors threatened his wife if she tried to follow them. In March 2001, a warrant was issued for the arrest of the auxiliary mayor and only one accomplice.

Right to freedom of association and assembly

25. During the period under review, 13 collective complaints were admitted, involving 1,959 alleged violations. The vast majority of the 618 confirmed violations concern the right to organize, for which the judiciary is largely responsible. Responsibility for confirmed violations of freedom of association rests solely with municipal authorities.

26. In the trial of those accused of the violent incidents against several leaders of the Izabal Banana Workers Union which occurred in October 1999 in Izabal (see A/54/688, annex, para. 32), oral proceedings began on 13 March against 24 persons accused of the crimes of coercion, aggravated search and illegal arrest. In addition to the serious deficiencies of the indictment drawn up by the Criminal Court of First Instance of Puerto Barrios (see A/55/174, annex, para. 38), during the oral proceedings the prosecutor's office and the trial court, despite being authorized to do so and despite the evidence produced, failed to ensure that the characterization of the crimes fitted the incidents or to correctly identify individual responsibilities. On 21 March, 22 of the 24 accused were sentenced to three years' imprisonment, commutable, for the crimes of aggravated illegal arrest in conjunction with the crime of coercion. The union's leaders, who had been forced to leave the area after the incidents, had to leave the country.

27. The Mission verified various complaints lodged in January 2001 by the Unión Sindical de Trabajadores de Guatemala, alleging breaches of the laws in force and of International Labour Organization (ILO) Conventions Nos. 87 and 98 on freedom of association and the right to organize. The Third Labour and Social Security Court, for instance, took three years and two months, instead of the legal time limit of 36 hours, to issue a summons after workers called in August 1997 for the Banco de Crédito Hipotecario Nacional to meet with them to sign a collective agreement on working conditions.

28. Recently, serious violations of the right to organize, accompanied by death threats, wrongful dismissal and persecution of union leaders and members, were confirmed, for which the municipal mayors of Cuilapa in Santa Rosa, Tecpán in Chimaltenango, La Gomera in Escuintla and Guastatoya in El Progreso were responsible. Although he was aware of the possible existence of a union dispute which would require the immediate reinstatement of the workers concerned, the Guastatoya labour inspector avoided administrative proceedings by claiming that the corresponding complaint had defects of form.

29. In May and June 2001, there was a resurgence of mass dismissals and violent threats against union leaders on the "El Real" and "El Atlántico" banana plantations at Morales in Izabal department, representing a clear setback in labour relations in the region.

30. At the Santo Tomás de Castilla dock in Puerto Barrios, Izabal, the two main union leaders were threatened and later dismissed after a work stoppage was organized on 24 and 25 February 2001, in a labour dispute arising from changes in the firm's administration. The Mission verified the presence of senior armed forces commanders at the negotiations.

Right to freedom of expression

31. The right to freedom of expression includes freedom of opinion and investigation, as well as the public's right to receive objective, unbiased information. During the period under review, this right was affected by alleged threats against journalists and communications media, as well as discrimination in the context of conflicts between the current Administration and print media which are becoming increasingly critical of the political class in general and the Government's actions in particular. While the television monopoly provides wide coverage of government action, the written press takes positions that are predominantly unfavourable to the executive branch. Both in the capital city and in the country's interior, threats against investigative journalism reached alarming levels, with State officials found to be responsible in some cases.

32. On 3 January, Claudia Méndez Villaseñor, a reporter with *El Periódico* who was investigating reports of corruption in a unit of the Ministry of Communications, Infrastructure and Housing, complained that she had received telephone threats from two Guatemala City council members. In a separate incident on 20 February, over 50 people, including Ministry staff, held a hostile demonstration outside the *El Periódico* offices, making use of State resources. A number of journalists were assaulted. On 1 March, Gustavo Soberanis, of the newspaper *Siglo XXI*, was threatened with a firearm by the Treasury Inspector when he tried to interview him about alleged expenditures by the Office of the President of the Republic.

33. The editor of *El Periódico*, Silvia Gereda, and journalist Martín Juárez reported receiving death threats and were attacked on 27 and 30 March respectively. Martín Juárez said that a car with five men in it followed him for two hours and that when he headed for the headquarters of the municipal fire brigade to take refuge, he was intercepted by another vehicle which forced him to stop. While one man aimed a shotgun at his head, another got into his car and threatened to kill him, as well as other journalists and the manager of the newspaper. He continued to receive death threats over the telephone for the next two days. He filed a complaint with the Public Prosecutor's Office and has been given police protection.

34. In Zacapa in August 2000, Juan Carlos Aquino, a journalist with *Radio Novedad*, received death threats and was attacked with a firearm in connection with his criticisms of regional public institutions. In December, Marwin Herwing, another *Radio Novedad* journalist, reported that unknown persons with firearms threatened to kill him after he criticized local politicians in a radio programme. In March 2001 in Quetzaltenango, Ady Violeta Albores was threatened with death and attacked, as a result of which she abandoned an investigation into a building project financed with public funds. In April, Sergio Miranda Calderón, a journalist with the magazine *El Sol Chortí* in Chiquimula and a member of the San José La Arada town council, published an article denouncing corruption in the management of municipal affairs; he subsequently received an anonymous letter containing death threats.

35. Because of the proliferation of such incidents, the Public Prosecutor's Office decided on 8 June to centralize all complaints of this kind received since June 2000 in a single prosecutor's office, the Special Prosecutor's Office for the Protection of Journalists and Trade Unionists.

36. On 6 December, the General Superintendency of Telecommunications notified the owner of *Radio Contemporánea FM*, in Quiché, that the station must go off the air because it did not have a broadcasting permit. Although the owner complied, the Superintendency filed in court to have him arrested for using a radio frequency illegally and broadcasting programmes which "attack and offend the dignity and decency of the authorities of the State of Guatemala ...". Other radio stations in a similar situation were

simply fined by the Superintendency. The complainant attributes these incidents to the fact that the radio station's broadcasts had criticized the departmental governor.

37. With regard to the recommendations made by the Special Rapporteur for freedom of expression of the Organization of American States (see A/55/174, annex, para. 48), a technical commission, consisting of three non-governmental organizations and the Strategic Analysis Secretariat, has been set up to draft a preliminary bill on free access to information in the possession of State agencies. On 27 March, after seven months of work, the Secretariat announced that it would transmit a proposal to the Office of the President of the Republic on 2 April. It drafted a document, most but not all of which was agreed by consensus with the non-governmental organizations.

Commitment to promote rules and mechanisms for the protection of human rights

38. The Mission welcomes the significant progress made with regard to international human rights instruments. In September 2000, Guatemala signed the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women and the Optional Protocol to the Convention on the Rights of the Child on involvement of children in armed conflict. In October, it ratified the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights, and in November it ratified the Optional Protocol to the International Covenant on Civil and Political Rights, enabling the Human Rights Committee to consider communications from individuals on violations of the Covenant.

39. On 25 February 2000, Guatemala ratified the Inter-American Convention on Forced Disappearance of Persons with a reservation to article 5 thereof (see A/55/174, annex, para. 72). The reservation is based on an apparent contradiction between extradition for offences of forced disappearance and article 27 of the Constitution, which bars extradition for political offences except as provided for in treaties and conventions with respect to crimes against humanity or against international law. The preamble to the Convention reaffirms that the systematic practice of forced disappearance is a crime against humanity. On this basis, under article 27 of the Constitution forced disappearance would be an extraditable offence and there would be no justification for the reservation.

40. The Mission has drawn attention to the inconsistencies between the present Juvenile Code and both the Constitution and the Convention on the Rights of the Child, as well as to the need for an adoption law. In this context, it welcomes the submission to the Congress in November 2000 of a new legislative proposal on adoptions, which is awaiting a decision. The adoption of implementing regulations for the Act on the Prevention, Punishment and Eradication of Domestic Violence is another positive development.

Commitment II: Commitment to strengthening institutions for the protection of human rights

41. One key element of impunity is the continuing pressure on judicial institutions and members of the judiciary. It is deeply disturbing that, during the period under review, various forms of intimidation and serious acts of violence against those involved in judicial proceedings have continued. Such incidents can be observed both in the day-to-day administration of justice and in especially important judicial proceedings, such as the Monsignor Gerardi case. Their persistence is affecting the independence of the judiciary and efforts to combat impunity.

42. Sometimes, these incidents occur because groups disagree with certain judicial decisions that they perceive as affecting their interests or expectations. Thus, public campaigns by interest groups may involve or encourage intimidation. After the Tenth Division of the Court of Appeals, on 28 November, overturned the death penalty imposed on persons accused of kidnapping a businessman, the Committee of Commercial, Industrial and Financial Associations of Guatemala took out paid advertisements in the press accusing the judges of promoting impunity. In this context, the judge presiding over the court reported that she had been followed and had received telephone threats.

43. The Mission is particularly concerned at the increasing frequency of violent mob incidents, whose intimidating effects result in judicial inaction at the local level. On 5 January 2001 in Santa Lucía La Reforma, Totonicapán, some 300 people forced the justice of the peace, on pain of death, to release an

individual arrested for environmental offences and urged him not to order any more arrests for such offences. In Senahú, Alta Verapaz, on 13 March, a mob launched a premeditated assault on the court of the peace and attacked justice of the peace Alvaro Martínez repeatedly, eventually killing him.

44. In other cases, pressure and intimidation are used to prevent the clarification and judicial punishment of serious violations and offences, especially when these are attributed to State agents. Since the beginning of the investigation into the Monsignor Gerardi case, various individuals involved in the judicial proceedings have been followed, intimidated, threatened and attacked. Such incidents have become systematic and have in common the fact that they are planned, using the necessary infrastructure to develop a major operational, logistical and human resource capacity. Their main aim appears to be to force members of the judiciary to abandon the case or to undermine the impartiality of their decisions, which means that such incidents intensify at key moments in the proceedings. During the period under review, coinciding with the start of the oral proceedings, the special prosecutor in the case, Leopoldo Zeissig, was followed and received telephone threats on a number of occasions. Furthermore, Yasmín Barrios Aguilar, a member of the Third Trial Court in charge of the oral proceedings, reported that on 16 March 2001 two individuals tried to break into her house. On 21 March, a day before the start of the oral proceedings, persons unknown threw a fragmentation grenade into her home; the explosion caused material damage.

45. Concern for the security and independence of persons involved in judicial proceedings was reiterated by Param Cumaraswamy, Special Rapporteur of the United Nations Commission on Human Rights on the independence of judges and lawyers, who, on his visit to the country in May 2001, expressed regret at the failure to implement most of the recommendations made following his August 1999 visit. He said that the persistence of the climate of threats against members of the judiciary and the impunity surrounding human rights violations are not conducive to the full implementation of the peace agreements with respect to the administration of justice and are also undermining and delaying the full attainment of the rule of law. He therefore urged the Government to do its utmost resolutely to combat impunity and attacks on the independence of the judiciary.

46. With regard to the commitment to strengthen the Office of the Counsel for Human Rights, a budget allocation of 30 million quetzales (approximately US$ 3,840,000) was approved for 2001. Although this represents an increase of 21 per cent in real terms over the previous year, it falls far short of the 40.5 million quetzales that were requested. Considering the requirements of thorough monitoring of the human rights situation, various sectors that are concerned about the Office agree that efforts to strengthen it, in particular its organization and management, need to be pursued and redirected by providing it with the necessary human and logistical resources for the investigation of violations, so as to consolidate its constitutional mission.

Commitment III: Commitment against impunity

Right to due process

47. The Mission has drawn attention repeatedly to some of the factors that contribute to the impunity prevailing in the country, such as the persistent shortcomings in the system of investigation and, in general, in the administration of justice, the continuing failure to fulfil the obligation to investigate and punish and the unwillingness of many officials to tackle human rights violations and crimes. To give a comprehensive picture of these factors, this section will analyse the situation of due process.

48. During the period under review, 143 complaints involving 1,193 alleged violations were admitted, and 3,672 complaints admitted in various periods were confirmed. The extent of the prevailing impunity can be seen from the fact that 55 per cent of confirmed violations are attributable to the State's failure to fulfil its legal obligation to investigate and punish. A further 15 per cent are attributable to obstruction of justice, particularly by members of the police through the alteration of police reports. This practice, mentioned in earlier reports, has become almost systematic, and no effective action has been taken to eliminate it.

49. The Mission, which from its very earliest reports identified impunity as the main obstacle to the effective enjoyment of human rights, notes with profound concern that it is an entrenched phenomenon. No real progress has been made in the prosecution of the majority of the most serious and representative cases of

human rights violations. In the Xamán case, for instance, after almost six years the proceedings are still in their initial phase and a trial date has still not been set (see A/55/174, annex, para. 61). There has also been no progress in prosecuting the soldiers responsible for the Dos Erres massacre in La Libertad, Petén (see A/55/174, annex, para. 62), for which proceedings were instituted in 1994, even though an agreement on compensation for the victims was reached in May 2001, as part of the amicable settlement proceedings instituted before the Inter-American Court of Human Rights, and the Government acknowledged its responsibility. In the proceedings for the murder of Myrna Mack (see A/52/946, annex, para. 44), it was reported that testimony implicating the accused soldiers had been lost and the court ruled that all proceedings conducted since 12 May 1999 were null and void, a ruling which the Mission feels undermines the credibility of the justice system in its efforts to combat impunity. The Inter-American Commission on Human Rights, having confirmed the delay in the administration of justice by the national courts in this case, decided to transfer the complaint to the Inter-American Court of Human Rights. No meaningful progress was made either in shedding light on the disappearance of Mayra Gutiérrez (see A/55/174, annex, para. 34), despite the investigations made by the Office of the Counsel for Human Rights. Lastly, the judicial proceedings concerning clandestine mass graves have, for the most part, been at a standstill since the exhumations were carried out.

50. In the proceedings for the murder of Monsignor Gerardi, defence counsel tried repeatedly to delay the start of oral proceedings and to have several persons involved in the judicial proceedings removed; the oral proceedings nevertheless began on 22 March. The climate of threats, harassment and intimidation, which affected members of the trial court, staff of the special prosecutor's office, lawyers for the Catholic Church and witnesses, reached such a level that the home of one of the judges was attacked with a fragmentation grenade.

51. In its 8 June ruling, the court established the existence of the crime of extrajudicial execution and accused Colonel (ret.) Lima Estrada, Captain Lima Oliva and former specialist Obdulio Villanueva of carrying out the crime and priest Mario Orantes Nájera of being an accessory. The judicial ruling left the way open for criminal prosecution of the members of the Presidential General Staff chain of command that was active in April 1998. The conclusion of this first stage of the judicial proceedings, which was welcomed both nationally and internationally, has been viewed as a milestone in the process of strengthening the rule of law and combating impunity. The Mission urges the Guatemalan authorities to take all necessary steps to guarantee the life and physical safety of the judges, prosecutors and witnesses. It also urges the Attorney General and the government authorities to provide their full support for the continuation of the prosecution of the members of the Presidential General Staff chain of command that was active in April 1998, an obligation which the Public Prosecutor's Office must carry out automatically, regardless of what happens with the appeal that has been lodged.

52. On 17 June, 78 of the 144 inmates of the Escuintla maximum security prison, including those indicted and convicted in cases which have had a major impact on society, escaped with the cooperation and complicity of most of the prison staff. The soldiers in charge of security on the prison perimeter were nowhere nearby at the time of the escape. This escape is a serious setback for efforts to combat impunity, further exacerbates the public's feeling that it is defenceless against crime and is especially discouraging for the witnesses, judges and prosecutors who have played an important role in favour of the effective trial and punishment of dangerous criminals.

53. Lynchings and acts of mob violence, both spontaneous and premeditated, continue, seriously undermining governance in various municipalities. Attacks on police stations, threats of lynching to force authorities to sign illegal agreements or resign, the release of alleged criminals as a result of public pressure, threats against members of the judiciary and serious clashes between communities have occurred with alarming frequency. During the period under review, there were 88 lynchings or attempted lynchings against 190 people, 37 of them fatal.

54. Some lynchings were especially serious, both because of their fatal consequences and because of the cruelty involved. One was the lynching on 28 November 2000 in Las Conchas, Alta Verapaz, in which five people were burnt alive. Others include cases already mentioned: the lynching at Xalbaquiej and the lynching of the Senahú justice of the peace (see paras. 9 and 43). In the former, the Mission verified that the arrest warrants issued on 8 March 2001 at the

request of the Public Prosecutor's Office had previously been denied because of the alleged risk to property and persons linked to the justice sector. Such reasons are completely extraneous to the goals of the criminal prosecution and simply reaffirm the impunity of those responsible for these acts.

55. Although the PNC Criminal Investigation Service produced detailed reports on facts and culprits in a number of cases, official investigations into most of the lynchings are simply a matter of form or non-existent. One example is the ruling in first instance on the 29 April 2000 lynching in Todos Santos Cuchumatán, Huehuetenango, in which a Japanese citizen and a Guatemalan died (see A/55/174, annex, para. 69). The ruling is a positive sign, in that it was objective and made a point of stating that the investigation of the facts must continue, but at the same time it demonstrated the impunity surrounding such acts, in that the authorities responsible for the investigation were unable to gather sufficient evidence to prosecute the real culprits. Such pervasive impunity encourages further lynchings.

56. The absence of a State policy against this crime, consisting of prevention and intervention in crisis situations, has meant that authorities of the executive branch and the judiciary have refused repeatedly to play an active role in preventing lynchings, and that commendable action by the Office of the Counsel for Human Rights and the police has not had all the desired effect.

Commitment IV: Commitment that there are no illegal security forces and clandestine structures; regulation of the bearing of arms

57. The Government recognized that it has an obligation to combat any manifestation of illegal security forces and clandestine structures, whose existence is incompatible with unlimited respect for human rights. There are signs that the influence and involvement of these groups in illegal and criminal activities has increased, but their clandestine nature and the complicity they enjoy makes them difficult to verify. The Government must combat the impunity which they enjoy, especially the tolerance, acquiescence or complicity of some public officials.

58. There has been an increase in violent deaths and other crimes attributed to illegal structures. The Mission is verifying disturbing signs of a link between some of these incidents and the existence of a group that allegedly includes members of the former Presidential General Staff "Archives" and the Treasury Guard. This group has ties to people in public office and apparently eludes police control because of the logistical support it receives. There is compelling evidence of its involvement in the "social cleansing" of small-time criminals and leaders of organized crime.

59. As for clandestine groups operating within prisons (see A/55/174, annex, para. 81), there was a significant increase in deaths of prisoners which have not been cleared up, as well as intimidation of prisoners and their families. With regard to the death of Luis García Pontaza (see para. 11), the prosecutor in the case said that it was a suicide, but the head of the office of the special prosecutor for organized crime expressed doubts about this hypothesis. The President of the Republic expressed the Government's readiness to cooperate in shedding light on the incident and indicated that the Strategic Analysis Secretariat would investigate it.

60. The existence of structures which conduct parallel investigations without being authorized to do so was confirmed in the trial for the murder of Edgar Ordóñez Porta (see A/55/174, annex, paras. 18 and 64). In the oral proceedings, it became clear that members of military intelligence had interfered in the investigation and that the Public Prosecutor's Office had not bothered to investigate the evidence thoroughly. The ruling handed down by the Escuintla trial court on 28 August 2000 concludes that "... in the present case, the principle of objectivity fully established in our Code of Criminal Procedure was violated ...", since "the entity solely responsible for investigation is the Public Prosecutor's Office and in the present case that entity, through its actions, allowed other institutions to carry out that activity ...". The ruling alludes to testimony on the involvement of the group known publicly as "La Oficinita", as well as of military intelligence agencies and the then Minister for Defence.

61. Testimony from various sources confirms that "La Oficinita" has continued to be involved sporadically in criminal investigation activities. In most cases, its involvement did not produce the desired results or increase the effectiveness of the criminal

prosecution. On the contrary, it distorted the official investigations and even prevented the conviction of alleged criminals for lack of evidence. The Mission has been informed of other illegal activities attributed to the group, which all point to the complicity or involvement of public figures in illegal structures. In the case of prosecutor Rocksanda Gálvez, there are indications that prosecutors linked to the group used contacts in the judiciary and the police to forge an arrest warrant and have her illegally detained on 5 December.

62. In many cases, the security staff of public officials, especially deputies and mayors, do not meet the legal requirements for bearing arms. Sometimes, such staff are used to intimidate or pressure communities, political opponents and commercial competitors, as well as to facilitate or abet illegal activities. This situation was verified in the departments of Chiquimula, Escuintla, Petén and Santa Rosa. In Nueva Concepción and Tiquiscate, Escuintla, extrajudicial executions have gone unpunished because of the support of lawyers and the inaction and complicity of members of the police and local judicial officials.

63. The actions of irregular armed groups are often of a criminal and insurgent nature. They usually engage in robbery or banditry, but they also put forward political demands and refer to the prevailing social and political situation, sometimes simply to cover up their crimes. They tend to consist of people with actual military experience of the armed conflict and young people who were not involved in it. Their appearance has been most frequent in areas where the paramilitary forces were very active during the armed conflict. Their growing presence, especially in the departments of Quetzaltenango, San Marcos and Solalá (see A/55/174, annex, para. 76 and A/54/688, annex, para. 77), seems to be related to the greater availability of members and weapons.

64. The Mission is concerned at the existence of criminal groups within private security companies, which repeatedly commit crimes that have a major impact on society, as well as at the State's failure adequately to monitor such companies and the companies' failure to monitor their employees. Currently, 81 companies are legally authorized to operate, only four more than in the previous period (A/55/174, annex, para. 85), but half of them do not fulfil any legal requirements. According to the Ministry of the Interior, 53 companies have not completed the relevant procedures and 20 are functioning clandestinely. Although the Ministry reported the latter companies, the various oversight agencies have yet to begin investigations.

65. The problem is complicated by the large number of such companies and the background of some of their members. According to Ministry of the Interior figures, they employ over 25,000 people — more than the National Civil Police and nearly as many as the armed forces; other sources estimate their numbers at three times those of the National Civil Police. The members of such companies, most of which are owned by serving or former officers of the armed forces or former members of the National Police, include persons alleged to have committed serious human rights violations and persons dismissed from State institutions for committing illegal acts.

66. In its previous report (A/55/174, para. 85), the Mission referred to the involvement of two private security guards in the deaths of three people, including journalist Roberto Martínez. Although one guard was convicted of the crime and the Ministry of the Interior ordered the closure of the company for which he worked, CUTEPPSI, on 4 October 2000, the company continues to function even though, according to official records, it has been dissolved. Other cases reveal the involvement of members of private security companies in raiding a pharmaceutical laboratory and in killing or seriously injuring various people, including minors. Casa Alianza filed a judicial complaint for the rape of a minor by members of an illegal security company. The Mission is disturbed at the lack of progress in approving the bill submitted to the Congress that would regulate the functioning of such companies, as provided for in the Agreement on the Strengthening of Civilian Power and on the Role of the Armed Forces in a Democratic Society.

Commitment VII: Safeguards and protection for individuals and entities working for the protection of human rights

67. The Mission is gravely concerned at the increasing number of complaints of threats, including death threats. Of the total number of complaints received during the period under review, 171 violations

have so far been confirmed. Many involve persons working in institutions for the protection and promotion of human rights, who have been intimidated using various forms of harassment: possible phone tapping, surveillance of their homes or places of work, being followed in the street and receiving threats over the telephone or in letters and pamphlets. The headquarters of the institutions concerned have also been the targets of numerous robberies and raids. Although some of these incidents look like ordinary crimes, their frequency suggests that they are part of a systematic campaign. They specifically target individuals and institutions working for the protection of human rights when such persons or institutions have been sharply critical of public authorities or have advocated the trial of members or former members of State institutions. Moreover, as already indicated, judges, prosecutors and journalists have also been targeted by such incidents. The reported incidents all have in common the fact that they have not been cleared up and the perpetrators have not been punished.

68. On 1 August 2000, on the Inter-American Highway in Chimaltenango, two unknown persons pretending to be journalists from *El Periódico* seized Celso Balam, an employee of the Human Rights Legal Action Centre, and beat him up. They kept him prisoner for three hours during which they questioned him about the analysis of the human remains found in exhumations, the place where those remains were being stored and the method being used to identify the perpetrators. The victim was forced to swallow sedatives before being released.

69. Other incidents which have not been fully cleared up and ought to be mentioned include the 4 September 2000 raid by four armed men on the headquarters of the Familiares de Desaparecidos de Guatemala association; the October attacks on the headquarters of the Mujeres en Solidaridad association and the Mujer Vamos Adelante association in Guatemala City; the threats against the Rigoberta Menchú Foundation, which intensified in the days leading up to 30 November, when the High Court of Spain was deciding whether it had jurisdiction over the complaint of genocide filed with it in late 1999; and the two occasions in 2000 and four so far in 2001 on which the headquarters of the Centro de Estudio, Información y Bases para la Acción Social was attacked and robbed. In March 2001, members of the Movimiento Pro Justicia received threats because of their public positions on the election of judges to the Constitutional Court.

70. On 5 May 2001, Barbara Ann Ford, an American nun working on the mental health programme of the Quiché diocese, was shot and killed in Zone 9 of the capital city. The murder appeared to be the work of ordinary criminals and, thus far, verification indicates that this may indeed be the case. However, the Public Prosecutor's Office has done little to investigate it and the Mission's work has been constantly obstructed by the special prosecutor in charge of the case. The Mission found it disturbing that, as soon as this tragic incident became known, the Ministry of the Interior, apparently with very little evidence to go on, publicly ruled out the possibility of a motive other than ordinary crime.

71. On 6 June 2001, the Asociación para la Justicia y la Reconciliación, made up of the communities which were the victims of the 11 massacres that took place in 1982, filed a complaint for the alleged crimes of genocide and crimes against humanity against the current President of the Congress, General (ret.) José Efraín Ríos Montt, who was President of the Republic at the time, and against members of his Armed Forces High Command during that period. The next day, staff of the Human Rights Legal Action Centre, which is advising the association, were followed and received telephone threats and, in incidents confirmed by the Mission, its headquarters was kept under hostile surveillance.

72. On the night of 11 June 2001, Barbara Rose Bocek, an American citizen belonging to an Amnesty International delegation on mission in Guatemala, was accosted by two armed men as she was preparing to enter her room in a hotel located in an exclusive area of the capital city. The men threatened her, bound her hands and feet, gagged her and left her in a deserted part of the emergency staircase. She was found in this state by hotel staff and a mission colleague in the early hours of 12 June. The mission's remaining activities were suspended and its members left the country on 13 June. When news of the incident became public, the only official who commented on it was the Minister for the Interior, who, without any firm evidence, accused Amnesty International of having staged the entire incident.

73. The State has a legal duty to prevent, investigate and punish all crimes and violations. In the

Comprehensive Agreement, it assumed the commitment to take special measures to comply with this duty when harassment, intimidation and threats affect persons and institutions working for the promotion and protection of human rights. This commitment is a long way from being fulfilled: the Mission has verified that repeated acts of intimidation have been neither investigated nor punished. This situation entails serious consequences and risks. First of all, the failure to clear up such incidents justifies the concern that a motive other than ordinary crime may exist, prompting speculation about the possible involvement, acquiescence or tolerance of agents of the State. Secondly, the State's inaction or limited response creates among victims the perception that the authorities are not really interested in halting this growing phenomenon, fuelling their fears and their distrust of the competent State institutions. Lastly, hasty public statements by high-ranking officials dismissing the incidents of which human rights defenders are victims weaken the determination, motivation and commitment of lower-ranking officials and authorities to conduct the corresponding investigations. Impunity in such cases exposes victims to the threat of further and more serious intimidation. The failure to take appropriate action increases the risk of this phenomenon becoming an integral part of the climate of social conflict in the country.

Commitment VIII: Compensation and/or assistance to the victims of human rights violations

74. As indicated in the sixth report on the verification of compliance with the peace agreements (see A/55/973, para. 29), there has not been the necessary progress in providing compensation for victims of human rights violations. The Peace Secretariat has begun to evaluate the pilot compensation projects implemented in the country's interior. In the meantime, a "negotiating framework" is being prepared for readjusting a national compensation plan on which consensus was reached between the Peace Secretariat and the Multi-institutional Forum for Peace and Harmony.

75. On 27 June, the Government issued Governmental Agreement No. 263-2001 setting up the Commission for Peace and Harmony. The Agreement did not incorporate all the recommendations of the Clarification Commission (see A/53/928, annex), and the Multi-institutional Forum and the Counsel for Human Rights initially refused to join the new Commission. The Mission urges the Government and the organizations that are supposed to join the new Commission to work together on the adoption of the governmental and legislative measures needed to set up a body with the power to promote and oversee full compliance with the recommendations of the Clarification Commission.

III. Final observations

76. The situation of human rights in Guatemala is closely linked to the extent of compliance with the peace agreements. It has not been possible to ensure the population's widespread enjoyment of economic, social and cultural rights and to fulfil the expectations generated after the signing of the peace agreements, because many important commitments remain to be implemented. For that reason, a large part of the population, especially the most disadvantaged sectors, such as indigenous people, women and poor peasants, have yet to feel the benefits of peace. The pressing need for those commitments to be implemented in practical terms threatens to raise the level of conflict in the country. The rescheduling of commitments offers a new opportunity to meet the challenge of complying with this national agenda.

77. The end of the internal armed conflict and of an institutional policy that violated human rights represented a qualitative and quantitative improvement. After the demobilization of URNG, the redeployment of the armed forces and the disbanding of the military commissioners and the Voluntary Civil Defence Committees, the Mission turned its attention to the new National Civil Police, the Public Prosecutor's Office and the judiciary. Verification is being carried out amid difficult circumstances that limit the enjoyment of human rights, such as criminal violence, lynchings and "social cleansing" operations. In addition to the climate of threats and intimidation, there have recently been actual attacks that curtail the action of members of the judiciary, journalists and human rights defenders. Furthermore, the inherited pattern of impunity is becoming a systematic, cross-cutting phenomenon, as illustrated by the failure to clear up and punish almost all the serious violations that took place during the

armed conflict and most of the significant cases that have occurred more recently.

78. The influence of situations left over from the armed conflict is obvious and the State authorities must give priority to eradicating them. The Public Prosecutor's Office bears special responsibility for breaking the vicious circle of impunity. The armed forces, for their part, must promote an institutional policy that eliminates any possibility of obstruction of justice.

79. To cope with the high level of criminal violence and insecurity, the country inherited State institutions that were seriously flawed. Although the agreements give priority to strengthening the police and the judiciary as a means of combating crime, that process will be a gradual, medium-term one. It is the State's inability to safeguard human rights that has made the public feel defenceless and has increased tolerance for illegal, increasingly violent phenomena such as lynchings and "social cleansing". In this context, the Mission's overall findings confirm that the human rights situation is not improving and that, as already mentioned in previous reports (see A/54/688, annex, para. 97 and A/55/174, annex, para. 14), there are renewed signs that it might be deteriorating.

80. Lynchings are a major source of violations of fundamental rights, as well as a factor in undermining governance in several parts of the country. Increasingly, the population is using the threat of lynching as a means of attracting the authorities' attention. The absence of a policy for preventing and combating lynchings, as well as the widespread impunity they enjoy, is making it increasingly easy to carry them out in a premeditated manner, including against authorities and members of the judiciary. Their causes go deeper than lack of education or ignorance of the law. They are more prevalent in places where the armed conflict had a greater impact, where models of coexistence and the social fabric were destroyed and where human development and social marginalization indices are worse. These factors, combined with the slow pace in strengthening civilian power and State institutions, the involvement of former members of paramilitary structures and the lack of progress in restoring indigenous customary law, must be taken into account in any action to eradicate the practice of lynchings.

81. The actions of illegal groups are threatening the exercise of human rights. State agents have been involved in "social cleansing" operations, in the conduct of parallel investigations and in the obstruction of judicial proceedings. Other groups, within private security companies over which there is insufficient State control, commit serious crimes. In order to strengthen and give credibility to the process of building democratic institutions that uphold the rule of law, the authorities must combat any manifestation of such groups, especially the key component of their impunity, namely, the tolerance, acquiescence or complicity of some public officials.

82. Threats and intimidation against members of the judiciary have been a habitual means of preventing the clarification and punishment of crimes and human rights violations. It is essential that the State promote an effective policy for the protection of judges, prosecutors, witnesses and lawyers that is not limited to judicial proceedings. The necessary funding has not been allocated for implementing the act on this subject (see A/54/688, annex, para. 39).

83. In a context of harsh criticisms of public authorities and calls for the institution of judicial proceedings against members or former members of State institutions, the large number of cases of harassment and threats against human rights defenders reported during the period under review is matched by similar incidents against judges, prosecutors and journalists, suggesting that they may form part of a systematic campaign of intimidation. Although some cases look like ordinary crimes, the failure to clear them up and to punish the perpetrators justifies the climate of fear and the assumption that they are linked to persons and practices from the past. It is clear that the commitment to take special measures to protect against all such situations and to investigate them exhaustively has not yielded tangible results.

84. During the period under review, there was an increase in threats and intimidation against journalists and the media. The climate of political polarization and the criticisms made against the authorities are no justification for the State's failure in its duty to guarantee complete freedom of the press and to investigate all such cases exhaustively. To permit the full exercise of freedom of expression and the building of a democratic society, it is also necessary to expand access to the media, especially for indigenous people, avoid media concentration and monopolies and

safeguard the public's right to receive objective, unbiased information.

85. To preserve the institutional accountability of the National Civil Police and earn the public's trust, the timely investigation, dismissal and punishment of all police officers guilty of violations are essential. To that end, the necessary coordination must be established between the police and the Public Prosecutor's Office. Clearing PNC ranks of such police officers would be the best tribute that could be paid to all the police who risk or have lost their lives in the line of duty.

86. The adoption of legislation to enhance the protection of human rights is essential for ensuring that the population has a legal framework that guarantees its rights. It is important that the Government take the necessary steps to give full effect to the international instruments signed by Guatemala, especially those related to crimes against humanity, as well as to sign other instruments such as The Hague Convention of 1993 on Protection of Children and Cooperation with Respect to Intercountry Adoption.

87. The legislative agenda for the peace process includes a number of legislative proposals whose adoption would ensure progress in the enjoyment of human rights. Likewise, to advance the process of national reconciliation, based on appropriate implementation of the recommendations of the Clarification Commission, it is important that a joint effort be made to set in motion the Commission for Peace and Harmony.

88. The challenges and difficulties described above do not as yet seem to have met with an adequate response from the Government. To tackle those problems effectively and ensure that the human rights situation improves and does not deteriorate as mentioned earlier, it is necessary and urgent that renewed, broad-based efforts be made, under the leadership of the President of the Republic. The key elements of the human rights agenda which the President has recognized on numerous occasions should feature prominently in such efforts, as well as the new tasks and priorities reflected in the concerns of human rights defenders and the international community.

Appendix

Statistics on human rights violations during the period from 1 July 2000 to 30 June 2001

		Reported in the period under review				*Reported in earlier reports*		*Total confirmed in the period under review*
		Complaints admitted	*Violations alleged*	*Violations verified*	*Violations confirmed*	*Violations verified*	*Violations confirmed*	
Right to life (A)								
A1	Extrajudicial executions or deaths in violation of legal guarantees	27	43	26	18	7	4	22
A2	Attempted extrajudicial executions	12	42	39	11	5	2	13
	Total	**39**	**85**	**65**	**29**	**12**	**6**	**35**
Right to integrity of person (B)								
B1	Torture	12	33	31	27	1	1	28
B2	Cruel, inhuman or degrading treatment	10	88	26	23	6	4	27
B3	Ill-treatment	13	49	47	42	10	2	44
B4	Excessive use of force	7	18	17	15	10	4	19
	Total	**42**	**188**	**121**	**107**	**27**	**11**	**118**
Right to liberty and security of person (C)								
C1	Arbitrary detention	7	63	48	44	8	8	52
C2	Detention in violation of legal guarantees	14	67	52	44	28	24	68
C3	Kidnapping	0	1	0	0	0	0	0
C4	Hostage-taking	1	4	1	0	0	0	0
C5	Enforced disappearance	0	2	2	0	2	2	2
C6	Forcible, unjust or discriminatory recruitment	0	0	0	0	0	0	0
C7	Death threats	38	150	105	94	13	2	96
C8	Other threats	52	192	131	77	27	8	85
	Total	**112**	**479**	**339**	**259**	**78**	**44**	**303**
Right to due process (D)								
D1	Right to be presumed innocent	5	7	6	3	1	1	4
D2	Right to be tried by a competent, independent and impartial judge	3	4	3	3	7	7	10
D3	Right to be tried within a reasonable time	1	25	25	25	5	2	27
D4	Right to defence and to be assisted by a lawyer	1	3	3	3	16	16	19
D5	Right to be assisted by an interpreter	1	2	2	2	0	0	2
D6	Right not to be compelled to testify against oneself	0	0	0	0	0	0	0
D7	Right of appeal	0	2	2	2	0	0	2
D8	Right of habeas corpus	1	1	1	1	0	0	1

		Reported in the period under review				*Reported in earlier reports*		*Total confirmed in the period under review*
		Complaints admitted	*Violations alleged*	*Violations verified*	*Violations confirmed*	*Violations verified*	*Violations confirmed*	
D9	Right of access to the justice system	28	168	150	148	886	875	1 023
D10	Obstruction of the work of the justice system	36	348	341	336	581	209	545
D11	Legal duty of the State to investigate and punish	66	632	475	464	1 668	1 554	2 018
D12	Right to compensation	0	0	0	0	17	16	16
D13	Legal guarantees of the victim	1	1	1	0	5	5	5
	Total	**143**	**1 193**	**1 009**	**987**	**3 186**	**2 685**	**3 672**
Political rights (E)								
E1	Right of access to public office	1	1	1	1	0	0	1
E2	Right to be registered on the electoral roll	0	0	0	0	0	0	0
E3	Right to vote	0	0	0	0	0	0	0
E4	Right to hold political office	0	0	0	0	0	0	0
	Total	**1**	**1**	**1**	**1**	**0**	**0**	**1**
Right to freedom of expression (F)		**1**	**79**	**75**	**71**	**3**	**2**	**73**
Right to freedom of association and assembly (G)								
G1	Right to freedom of association	2	80	78	78	3	2	80
G2	Right to organize	11	1 879	537	536	4	2	538
G3	Freedom of assembly	0	0	0	0	0	0	0
	Total	**13**	**1 959**	**615**	**614**	**7**	**4**	**618**
Right to freedom of movement and residence (H)								
H1	Deprivation of documents	0	0	0	0	0	0	0
H2	Enforced population displacement	0	0	0	0	0	0	0
H3	Freedom of movement	0	1	1	1	0	0	1
	Total	**0**	**1**	**1**	**1**	**0**	**0**	**1**
Violations of the Agreement on Identity and Rights of Indigenous Peoples (P)								
P1	Freedom of thought, conscience and religion	0	0	0	0	0	0	0
P2	Use of indigenous languages	0	0	0	0	0	0	0
P3	Use of indigenous dress	1	1	1	0	0	0	0
P4	Right to register names in indigenous languages	0	0	0	0	0	0	0
	Total	**1**	**1**	**1**	**0**	**0**	**0**	**0**
	Grand total	**352**	**3 986**	**2 227**	**2 069**	**3 313**	**2 752**	**4 821**

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Review of the efficiency of the administrative and financial functioning of the United Nations

Programme budget for 2000-2001

Joint Inspection Unit

Report of the Joint Inspection Unit entitled "Management of buildings: practices of selected United Nations system organizations relevant to the renovation of the United Nations Headquarters"

Note by the Secretary-General

The Secretary-General has the honour to transmit to the members of the General Assembly the report of the Joint Inspection Unit entitled "Management of buildings: practices of selected United Nations system organizations relevant to the renovation of the United Nations Headquarters (JIU/REP/2001/1).

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JIU/REP/2001/1

MANAGEMENT OF BUILDINGS: PRACTICES OF SELECTED UNITED NATIONS SYSTEM ORGANIZATIONS RELEVANT TO THE RENOVATION OF THE UNITED NATIONS HEADQUARTERS

Prepared by

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ACRONYMS

ACABQ	Advisory Committee on Administrative and Budgetary Questions
BAF	Building Accommodation Fund
BMS	Building management
CCAQ (FB)	Consultative Committee on Administrative Questions (Financial and Budgetary)
CHF	Swiss franc
CMP	Capital Master Plan for the United Nations Headquarters
CTBTO	Comprehensive Nuclear-Test-Ban Treaty Organization
FAO	Food and Agriculture Organization of the United Nations
FIPOI	*Fondation des immeubles pour les organisations internationales*
HQ	Headquarters
HQF	Headquarters Utilization Fund
IAEA	International Atomic Energy Agency
IFAD	International Fund for Agriculture Development
ILO	International Labour Organization
IMO	International Maritime Organization
ITL	Italian lira
ITU	International Telecommunication Union
JIU	Joint Inspection Unit
PAHO	Pan-American Health Organization
REF	Real Estate Fund
UNAIDS	The Joint United Nations Programme on HIV/AIDS
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNHCR	United Nations High Commissioner for Refugees
UNIDO	United Nations Industrial Development Organization
UNHQ	United Nations Headquarters
UNOV	United Nations Office at Vienna
UPU	Universal Postal Union
USD	United States Dollar
VIC	Vienna International Centre
WFP	World Food Programme
WHO	World Health Organization
WIPO	World Intellectual Property Organization
WMO	World Meteorological Organization

EXECUTIVE SUMMARY: OBJECTIVES, CONCLUSIONS AND RECOMMENDATIONS

Objectives: **To examine operational and financial issues of building management pertaining to the renovation of the United Nations Headquarters buildings in the light of management practices of selected United Nations system organizations;**

To assist Member States and the Secretariat in considering measures aimed at timely and systematic maintenance and capital improvements at the United Nations Headquarters.

CONCLUSIONS

A. Ensuring adequate provision for systematic building maintenance and for capital expenditure is a problem that most of the organizations of the United Nations system have faced (para. 16).

B. Six years ago, the Joint Inspection Unit (JIU) issued an early warning[1] that neglecting to systematically maintain the facilities of the organization, because of chronic under-funding, would prove both dangerous and expensive in the medium and long-term (paras. 10-11).

C. This position of JIU was shared by the Secretary-General in his comments on the report.[2] This report was not, however, considered by the General Assembly (para.10).

D. Most of the United Nations system organizations reviewed by the Inspectors hold the view that, in order to keep pace with the structural deterioration of buildings due to ageing and wear of equipment and installations, systematic ongoing and preventive maintenance is a necessary requirement and an unavoidable expenditure, tantamount to good management (para.15).

E. The United Nations needs to review its budgeting policy on building maintenance costs and capital expenditure in these times of prolonged budgetary stringency, competing demands for scarce resources and a pronounced tendency to curb all kinds of non-programme expenditures (para. 19).

F. Due to the major differences and specificity of each case in the United Nations system organizations considered, it is not possible to establish or recommend a system-wide and across-the-board level of expenditure for building maintenance (para. 21).

G. The standard practice of United Nations system organizations, despite the recognized principle of inviolability of their premises, is to voluntarily follow local building codes on safety and security, environmental standards, fire protection and energy conservation (paras. 22-23).

H. Based on the Headquarters Agreement and in the absence of specific regulations enacted by the United Nations on building codes, the local building codes should apply to the United Nations Headquarters premises (para. 23).

I. In the case of large refurbishing or construction projects, United Nations system organizations turn to their host countries for consultation, advice, loans, and various kinds of support in cash or in kind. Although provided to various extents, such support is indispensable and should continue to be provided (paras. 27-31).

J. The practice of the United Nations system organizations shows that the handling of large and complicated capital expenditure works requires specialized expertise and experience. This observation is particularly relevant to supervising the implementation of the capital master plan (paras. 32-34).

K. The Organization is also in need of an institutionalized financial framework to handle substantive capital expenditure with which the biennial regular programme budget cannot cope. To this effect, the United Nations should consider the feasibility of following the time-tested practice of some United Nations system organizations which have building/real estate funds replenished from a mixture of sources: annual contributions, budgetary surpluses, miscellaneous income, income from renting office space (paras. 69-74).

L. The on-going process of reform and modernization of the United Nations Secretariat should also be applied to building management. To this effect, a cost measurement system for building maintenance should be developed. This should be based on the idea that office space is not free, but should be considered a scarce resource to be used optimally (paras. 75-78).

M. Refurbishing, renovation and alteration work in the United Nations Headquarters represent a unique opportunity to revisit and improve office space management in Headquarters, presently characterized by irrational and even abusive office space allocation. This results in cases of overcrowding (which mean poor working conditions for the staff) and large half-empty offices (paras. 83-88).

RECOMMENDATIONS

Recommendation 1: In the context of the capital master plan, the General Assembly should review the practice and establish a policy on the management and maintenance of United Nations buildings on the basis of the proposal submitted by the Secretary-General. (see paras. 19-20)

Recommendation 2: The United Nations Secretariat should take measures aimed at full compliance of its buildings with the local building codes, with a view to ensuring safety, security and a sound working environment in the United Nations Headquarters. (see para. 25)

Recommendation 3: Financial and non-financial support from the host government and the local authorities needs to be solicited and encouraged in the implementation of the current project for renovating and improving the United Nations Headquarters buildings. (see para. 31)

Recommendation 4: The Secretary-General should ensure that the Facilities Management Division of the Office of Central Support Services has sufficient staff with the required professional capability to supervise the implementation of the capital master plan. (see para. 34)

Recommendation 5: The General Assembly should request the Secretary General to prepare a feasibility study for establishing a building/real estate fund for the purpose of covering the costs of major repairs, renovation, upgrading and replacement of equipment. (see para. 74)

Recommendation 6: The Secretary-General should report to the General Assembly on the use of modern management tools such as information technology and a cost measurement system, that measure the operating costs of office space by organizational unit of the Secretariat. (see para. 82)

Recommendation 7: In the context of the capital master plan, the Secretary-General should report on office space management, indicating the need for possible changes in office space standards. (see para. 89)

Recommendation 8: The Secretary-General should revise and enforce norms and standards for office space allocation at the United Nations Headquarters and other duty stations, in order to avoid discrimination and disputes. (see para. 90)

I. INTRODUCTION

1. In response to a suggestion forwarded by the Department of Management of the United Nations Secretariat to the Joint Inspection Unit (JIU), this study was included in the work programme of JIU for 2000. In reviewing issues related to building management at United Nations Headquarters, the Inspectors fully took into account the concerns of United Nations Secretariat officials involved in the elaboration of the report of the Secretary-General entitled Capital Master Plan.[3] The present JIU report has been prepared in consultation with the Department of Management, in particular with the Office of Central Support Services.

2. The report is limited in scope: it is not a systematic study on building management in general within the United Nations system, but a case study of management of Headquarters buildings in selected United Nations system organizations with particular focus on management at United Nations Headquarters buildings. This is the reason why the Inspectors did not consider building management in duty stations other than the headquarters of each organization reviewed, nor related issues such as coordination of properties management in several duty stations within a single organization, or among several United Nations organizations.

3. A survey of practices of a number of United Nations system organizations was carried out and their experience with building management reviewed. The criteria for the selection of the organizations were based on the relevance of their building management practices and experience to the current problem facing the United Nations Headquarters building. Relevant information was collected from the United Nations system organizations through a questionnaire. The Inspectors visited the Headquarters buildings of several organizations to further assess their problems and identify strong points in their management. During their visits, knowledgeable responsible officials provided the Inspectors with information on their management practice and with comparative information on other United Nations system organizations and the private sector. This served the purpose of benchmarking United Nations practice with regard to building maintenance cost budgeting, use of information technology and cost measurement systems. The information the officials provided was useful and the Joint Inspection Unit expresses its gratefulness to them for their full and timely cooperation.

4. The Inspectors analyzed key issues relating to building management including the financing of capital expenditure projects. In doing so, they took into account the relevance of those issues to the capital master plan, as well as the usefulness of the analysis for Member States in the process of considering the capital master plan.

5. The Joint Inspection Unit expresses its appreciation to Dr. Andrzej T. Abraszewski, former Inspector at the Unit and a current member of the Advisory Committee on Administrative and Budgetary Questions, for having played an important role in initiating the preparation of this report, and for having actively participated in its completion.

II. PAST JIU CONTRIBUTIONS TO VARIOUS ASPECTS OF FACILITIES MANAGEMENT RELEVANT TO THE CAPITAL MASTER PLAN FOR THE UNITED NATIONS HEADQUARTERS

A. JIU reports on the Utilization of Office Accommodation (1974 and 1975)[4]

6. JIU issued a report in 1974 on office space accommodation at the United Nations Headquarters.[5] This report concluded that occupancy standards for space were generally satisfactory, with possible room for improvement in the further reduction of the number of junior professional staff (P1 to P3) occupying individual offices. At the same time, serious overcrowding of General Service staff existed in several areas. The Inspectors noted in the report the need for better space management and planning: in particular, the long-term office accommodation problem would require a decision by the General Assembly.

7. JIU drew attention to the fact that actions on office space management by the Office of General Services were frequently challenged within the Secretariat, and called for reinforcing the authority of this Office in all space management matters. The Advisory Committee on Administrative and Budgetary Questions (ACABQ) agreed with the Inspectors that time-consuming disputes should be avoided and that it was essential that the authority of the Office of General Services to manage space be reinforced.[6]

8. On the question of office accommodation provided for extrabudgetary staff,[7] JIU's report issued in 1975 pointed out that it was one of elements in the question of allocation of "support costs" for extrabudgetary activities. It noted that there was no uniform approach within the United Nations system to the issue of accommodation of extrabudgetary staff.

9. Reviewing these reports, the Inspectors are of the view that due attention was not paid to the importance of office space allocation and to costs of the use of office space. Inadequately allocated office space creates unsound working conditions, which can result in time-consuming and counter-productive disputes at the work place. Improper cost measurement for office space allocation can result in the subsidizing of extrabudgetary activities by the regular budget through partial financing of office space allocated to extrabudgetary staff. The importance of these two problems has been underestimated so far, and they have consequently not received appropriate attention (see Chapter V of the present report).

B. JIU report on the Management of Buildings in the United Nations System (1993)[8]

10. Among the conclusions and recommendations of the 1993 JIU report on the management of buildings in the United Nations system,[9] two issues are deemed particularly relevant to the current situation of the United Nations Headquarters facilities. First, the report provided an early warning that negligence in systematic maintenance of the facilities of an organization, due in this case to chronic under-funding, could be both dangerous and expensive (paras. 3 and 11). This position of the JIU was shared by the Secretary-General in his comments on the report.[10] The Unit's report, however, was not considered by the United Nations General Assembly.

11. Secondly, the report pointed out that United Nations system organizations were also in need of an institutionalized financial framework to handle substantive capital expenditure, which the biennial programme-budgets cannot cope with. Referring to the practice of

Vienna-based organizations and the Austrian Government, as well as to that of the Pan-American Health Organization (PAHO), the report recommended the creation of building funds replenished by systematic annual contributions (para. 18). The report did not, however, develop this innovative idea, neither did it elaborate-on financing modalities of the funds, (for example from budgetary surpluses, rental and other income, or voluntary contributions), operational measures of their utilization and strict control of their disbursement.

III. PATTERNS OF BUILDING MAINTENANCE AND CAPITAL EXPENDITURE HANDLING BY UNITED NATIONS SYSTEM ORGANIZATIONS

12. The term "capital expenditure" means the cost of major renovation, upgrading and construction projects, as well as cost of larger information technology projects, which add value to a given facility. Costs of current, ongoing maintenance are usually not encompassed by this term, since such maintenance work does not entail a change in the book value of the buildings concerned. With regard to capital expenditure and maintenance by United Nations system organizations, the analysis of their practice allowed JIU to identify two basic approaches, which are described below in parts A and B.

A. Anticipating the need for systematic current and preventive maintenance and for capital expenditure

Formulating a budgeting policy for building management

13. The Inspectors analyzed the modalities of financing maintenance and repairs in selected United Nations system organizations. These findings indicate that maintenance and repairs, which do not entail a change in the book value of the buildings, are financed by cash payment mainly through the regular budget, and, occasionally, through special account arrangements; while capital expenditure for major improvements and construction which add or create an accounting value are financed by cash payment through special account arrangements, by deferred payment through the regular budget (repayment of loans by several instalments), or in a combination of the two ways, as explained in detail in paragraphs 69-71 below.

14. Most of the United Nations system organizations, which the Inspectors contacted for this report, stressed the importance of securing sufficient budgetary resources for current maintenance. They were also of the view that the Secretariats should prepare, years well in advance, a plan for preventive maintenance projects and capital expenditure, to allow sufficient time for review by competent inter-governmental bodies and to secure their acceptance and corresponding budgetary appropriations.

15. Although no formal policy has been established, there has been a tacit understanding among Member States and Secretariats alike of most United Nations system organizations, that the facilities owned by them constitute high value assets, which must be properly maintained, in order not to lose their value. As a result, unlike at the United Nations, major reductions were avoided in the building management budgets of those United Nations system organizations, even during the period of budgetary constraints. Their implicit management policy is that ongoing and preventive maintenance and upgrading required to meet higher local standards of energy conservation, environmental security and fire prevention are

tantamount to good, cost-effective management of the organization's resources. It is understood that the cumulative effect of postponement of required maintenance work for many years, or negligence in maintenance, can necessitate huge expenses in the future which regular budgets cannot handle.

16. Nonetheless, officials of the United Nations system organizations interviewed mentioned that it was increasingly difficult to obtain sufficient resources for ongoing maintenance and capital expenditures at the present time of budgetary stringency, competing demands for shrinking resources and a strong tendency to reduce all non-programme activities. In this context, it should be noted that meeting the cost of upkeep of ageing buildings owned by United Nations system organizations has become an issue of system-wide concern, requiring a coordinated approach. At the most recent meeting of the Consultative Committee on Administrative Questions (Financial and Budgetary) (CCAQ(FB)) in August 2000, it was agreed to discuss the development of a capital budgeting policy at its following session. A Working Group composed of FAO, ITU, UPU, WFP and IFAD, with WFP acting as lead agency, was established to prepare a discussion document on this subject.

17. Persistent negligence of building maintenance in the United Nations Headquarters is a noteworthy case of poor management practice in the United Nations system. While the Secretariat had, in the past, undertaken preventive maintenance and established controls and an inspection system, the extent of this action was limited. Against a background of budgetary constraints, some preventive maintenance projects were postponed because resources were taken away from the building management budget and reallocated to other priority activities.

18. In the case of UNESCO, experiencing similar problems with its Headquarters building, the Member States, the host country and the Secretariat have however made a concerted effort to face a serious situation (paras. 36-50).

19. The Inspectors are of the view that the United Nations would need to learn from its past experience with building management, as well as from the experience of UNESCO and other organizations in reviewing its policy and practice concerning facilities management, particularly its budget policy towards maintenance costs and capital expenditure.

20. In considering the capital master plan, the General Assembly should review past practice and establish a policy of management and maintenance of United Nations buildings on the basis of the proposal submitted by the Secretary-General (see **Recommendation 1**).

21. Concerning the level of resources to be allocated for maintenance of buildings, the Inspectors consulted knowledgeable building managers and reviewed sufficiently representative cases of buildings managed by the United Nations system organizations studied. There conclusions are that, due to the large differences between the organizations considered and the specificity of each case, it is not possible to establish and recommend a system-wide and across-the-board parameter, in terms of percentage of assessed value of a property, for determining the level of resources to be allocated for building maintenance costs. Officials from some organizations indicated that such standard parameters determined on the basis of an industry benchmark are useful as a reference value, but others did not consider such parameters to be useful. Each case would therefore need to be treated individually by the United Nations system organization concerned.

Compliance with local building codes of safety and security

22. The standard practice of the United Nations system organizations, despite the recognized principle of inviolability of their premises, is to voluntarily follow local building codes of safety and security, environmental standards, fire protection, and energy conservation. In several United Nations system organizations, programme managers alerted senior management to problems of non-compliance with the local legislation, which led to decisions to do so in order to avert more serious problems due to negligence. The decision-making seems to be prompted by Headquarters agreements concluded between United Nations system organizations and their respective host countries. For example, the "Agreement between the Government of the French Republic and UNESCO regarding the Headquarters of the United Nations Educational, Scientific and Cultural Organization (UNESCO) and the Privileges and Immunities of the Organization on French Territory"[11] stipulates that the laws and regulations of the French Republic apply at the organization's Headquarters, while UNESCO has the right to make internal regulations that apply throughout its premises to enable it to carry out its work.

23. Concerning the United Nations Headquarters premises, based on the information provided to them, the Inspectors concluded that the New York building codes should apply to the premises in the absence of specific regulations enacted by the United Nations. This conclusion is based on the consideration that:

a) Section 7(*b*) of the Agreement between the United Nations and the United States of America regarding the Headquarters of the United Nations (thereafter called "Headquarters Agreement") states that "Except as otherwise provided in this agreement or in the General Convention, the federal, state and local law of the United States shall apply within the Headquarters district";

b) Section 8 of the Headquarters Agreement provides: "The United Nations shall have the power to make regulations, operative within the Headquarters district, for the purpose of establishing therein conditions in all respects necessary for the full execution of its functions. No federal, state or local law or regulation of the United States which is inconsistent with a regulation of the United Nations authorized by this section shall, to the extent of such inconsistency, be applicable within the headquarters district...."; and

c) To date, only four regulations have been adopted under the above-mentioned exception from federal, state and local law. These concern: (i) the United Nations social security system; (ii) qualifications for professional and other special occupational services with the United Nations; (iii) the times and hours of operation of services within the Headquarters district; and (iv) the limitation of damages in respect of acts occurring within the Headquarters district.

24. In this connection, the Inspectors were informed that the United Nations seeks to ensure compliance with the United States architectural and safety standards in a number of different ways including:

a) inspection upon appointment, when the United Nations permits inspections by local authorities upon request and prior appointment;

b) the use of contractors/consultants, when the United Nations hires consultants to inspect and monitor mechanical or electrical devices and prepare reports on their status and compliance with the code;

c) employing United Nations Secretariat staff to ensure compliance; and

d) provisions in a contract, when the United Nations requires that construction contractors comply with all local codes and the contract is drafted accordingly.

25. In the light of the above, and given the fact that the United Nations Headquarters buildings do not meet current minimum modern standards with respect to fire safety, security, energy conservation and better access for all persons, as reported in the capital master plan,[12] the Inspectors recommend that the United Nations Secretariat should take measures aimed at full compliance with the local building codes in order to ensure a sound working environment in the United Nations Headquarters buildings (see **Recommendation 2**).

26. It is worthwhile recalling that the ACABQ concurs with the United Nations Secretariat on the need for close coordination with local authorities over satisfying health and safety requirements at all stages of implementation of the capital master plan.[13]

Relations with host countries

27. In the case of large refurbishing or construction projects, the United Nations system organizations reviewed by the Inspectors turned to their host countries for consultation, advice, loans, and various kinds of support in cash or in kind. Such indispensable support and help have been provided to different degrees.

28. The *Fondation des immeubles pour les organisations internationales* (FIPOI), a foundation created with assistance from the Swiss Government and regulated by Swiss law, has granted interest-free loans to several international organizations based in Geneva, such as ILO, ITU, WIPO and WMO. ITU benefited from an interest-free loan of CHF 50 million, to be reimbursed over a period of 50 years. WIPO was granted two loans by the FIPOI, reimbursable over 40 and 50 years respectively, for the construction of the WIPO Headquarters buildings. The Swiss government decided not to charge the organization any loan interest with effect from January 1996. WMO was granted an interest-free loan of CHF 75 million, representing 75 per cent of the total cost of the construction of its new Headquarters building. The WMO loan is reimbursable over 50 years. UPU also benefited from a low-interest loan (3 per cent) reimbursable over the period 1981-2020 (40 years), to finance the construction of its headquarters building in Bern.

29. FAO officials indicated to the Inspectors that the government of the host country (Italy) generously allocated resources for maintenance of FAO buildings within the same budget assigned to the Presidential Palace, the Parliament, the Senate and the Presidency of the Council. Furthermore, the Ministry of Public Works of the Italian Government can shift funds from these budget sections to that for FAO, so that additional resources can be made available to FAO if needed. The Italian Government replaces the equipment provided when FAO was set up in Rome in 1950, and finances the purchase of additional equipment such as part of the air-conditioning system. While this generous policy with regard to the FAO buildings is due to the fact that the buildings are the property of the host country, the active

participation of the host country in the building management of FAO deserves special attention.

30. UNESCO is experiencing major difficulties with its ageing Headquarters building, based in Paris. In response to a wish expressed by the UNESCO Director-General, the host country (France) set up a mission for the purpose of deciding what works should be envisaged for the restoration and improvement of the organization's buildings. To carry out this task, the French government appointed a renowned high-level architect, Mr. Joseph Belmont, the Honorary Inspector-General of Construction of the French Government. Because of the similarity in the problems confronting the UNESCO buildings and those of the United Nations, part B of this chapter is devoted to a more detailed review of the case of UNESCO, in order to provide a reference to the Member States and Secretariat of the United Nations.

31. Referring to the prominent role that the host Government, as well as the City and the State of New York have played in the successful development of the United Nations Headquarters complex in New York, the ACABQ has in its recent report,[14] encouraged the active participation of the host Government, state and local authorities in the current capital master plan project, including in its funding. The Inspectors concur with the ACABQ and believe that such support needs to be solicited and encouraged in the implementation of the current project for renovation and improvement works for the United Nations Headquarters buildings (see **Recommendation 3**).

Importance of in-house expertise in building management

32. Attention needs to be drawn to the necessity of in-house technical expertise not only for construction projects, but also for maintenance and improvements. The Inspectors noted that in a number of United Nations system organizations, technical expertise is available to properly maintain buildings and their technical installations. Professional architects are sometimes appointed as staff members responsible for the buildings and resources allocated to have technicians available on a permanent basis. However, the availability of in-house technical expertise for building management needs to be balanced with cost-optimization through outsourcing. In other words, the core in-house technical expertise should be kept at a cost-optimal level that enables the effective and efficient supervision of outsourced tasks, as well as daily maintenance work.

33. High level professionalism of responsible Secretariat staff, including professional architects and other technical staff, is required for the handling of large and complicated capital expenditure works. This has been demonstrated by the experience of United Nations system organizations such as WMO and UNESCO. During the whole period of design and construction of the new WMO Headquarters building, a special team was set up to handle all the technical issues related to the construction. It is worth mentioning that the new Headquarters building of WMO is impressive not only because of its fresh, aesthetic design, but also because of its user-friendliness, compliance with the local safety and security requirements and high energy-efficiency, which ensure a sound and safe working environment. UNESCO has recently established a Headquarters Division that encompasses organizational units for the renovation of the Headquarters buildings, their maintenance and security.

34. This observation seems to be particularly relevant to the supervision of the implementation of the capital master plan for the United Nations. In ensuring the quality,

economy, efficiency and effectiveness of the implementation of the plan, it is indispensable that the Office of Central Support Services be equipped with technically competent staff. The Secretariat needs to keep control over the contractors providing services, since loss of management and control capability over outsourced activities would negatively affect their performance. As explained in a previous JIU report on outsourcing,[15] the success of outsourcing is determined by the availability of technically competent staff who supervise the outsourced activities in terms of timeliness, quality and costs of products and services delivered. The Inspectors therefore recommend that the Secretary-General ensure that the Facilities Management Division of the Office of Central Support Services has sufficient professional capability to supervise the implementation of the capital master plan (see **Recommendation 4**).

35. A summary of the status of building management in selected United Nations system organizations is attached as an annex. Given that the detailed information on practices of building management in the United Nations and UNESCO is provided in the main text, these two organizations are not included in the annex.

B. UNESCO project for restoration and improvement of its Headquarters buildings

36. The programme of restoration and improvement of UNESCO buildings, particularly its headquarters main building constructed in 1958 and located at the Place de Fontenoy in Paris, is a case with a number of similarities to the current problems facing the United Nations Headquarters buildings.

37. The UNESCO Headquarters is a historical landmark located in a prestigious neighbourhood of Paris. An international committee, composed of five world-class architects, was constituted for the supervision of the construction and ornamentation of the building. The international committee selected a project management team, and construction started in 1955 under its supervision. Three years later, in 1958, the Headquarters building was inaugurated.

38. In 1952, the UNESCO General Conference accepted the offer of 2,025 million old French Francs from the French Government for the construction of Buildings I, II and III on the Place de Fontenoy. In 1960, the General Conference authorized the Director-General to contract loans to construct an extension of the main Headquarters building. UNESCO took out loans in 1960 and 1970, in accordance with decisions by the General Conference, after unsuccessful attempts to obtain contributions and/or loans on favourable terms from Member States.

39. The problems that UNESCO is currently facing are numerous. Firstly, in spite of the fact that the building has aged, little upkeep work has been done since its construction. Owing to major negligence and to the lack of attention which should have been paid to maintenance, it is in a poor state; and does not provide the occupants with proper working and safety conditions.

40. Secondly, the number of Member States increased from 70 in 1958 to 186 in 2000. The that the Secretariat had to meet therefore also increased and diversified accordingly. While a number of construction and extension projects were undertaken on an ad hoc basis with a view to increasing the floor area, this has not fully met the increased requirements.

41. Furthermore, the buildings are not able to evolve and adapt to the structural modifications and needs of the UNESCO Secretariat. Programme implementation operations have actually been hampered. In conclusion, the building is no longer suited for its purposes.

42. In 1999, the French Government made available to UNESCO a renowned architect, Mr. Joseph Belmont, to carry out a mission covering: (i) the restoration of the buildings at the UNESCO Headquarters building site; (ii) bringing them into conformity with current safety regulations; (iii) integrating them into their environment, and (iv) reviewing their potential for extension in the long-term.

43. The progress report on the restoration and enhancement of UNESCO Headquarters drawn up by Mr. Belmont was submitted to the UNESCO Secretariat in June 1999. It made observations and conclusions that go well beyond the reactive and limited approach adopted so far by UNESCO.

44. The proposal made by Mr. Belmont consists of a single project with three phases. The first phase covers operations which are essential for the safety of individuals and the integrity of the buildings. The second phase includes works necessary in terms of the functioning and appearance of the premises, and the last phase concerns the expansion of Headquarters premises by annexing a number of French Administration buildings on the place de Fontenoy.

45. The cost of the renovation plan for the UNESCO Headquarters buildings, as prepared by Mr. Belmont, totals USD 131.9 million, broken down as follows: (*a*) USD 21.5 million for the first phase which also includes constitution of a contracting authority and a project management team for the renovation work; (*b*) USD 75.4 million for the second phase; and (*c*) USD 35 million for the last phase.

46. The Secretariat submitted four financing scenarios which include: four borrowing options entailing interest-free loans; or commercial loans with 5%-interest, repayable over 20 to 30 years and guaranteed by Member States, as well as other options; such as increasing the regular budget to cover the investment without recourse to loans, and returning the buildings to the host country, which would then ensure their maintenance (called "the FAO model").

47. In 1999, the UNESCO General Conference examined the question, and adopted a resolution[16] involving the following measures:

a) The Secretariat obligates the minimum sum of USD 6.5 million for the renovation and conservation of Headquarters buildings, in order to start implementing the first phase of the renovation;

b) The Secretariat negotiates with Member States with a view to obtaining the most favourable conditions for financing the second and third phases through voluntary contributions from Member States, interest-free loans, or the two modalities combined;

c) The Secretariat establishes a special account to accommodate funds irrespective of their source, including voluntary contributions in cash and in kind that Member States were invited to make.

48. In this connection, it should be noted that since the total cost implications of Phase 1 amount to USD 21.5 million, the balance of USD 15 million still has to be found. To this end, different possibilities have been explored such as interest free loans, commercial loans, increasing the rental for space occupied by delegations, meetings, and seminars, and extrabudgetary contributions by Member States.

49. In a report submitted to the General Conference held in 1999, the Director-General of UNESCO laid emphasis on the particular role to be played by the host country in the context of the restoration and conservation of the Headquarters buildings. He stated: "The UNESCO Headquarters buildings are located in Paris, the capital of France: it is therefore only natural that the host country should pay attention to the conservation and upkeep of these buildings."[17]

50. It is worthwhile underscoring the fact that the French Government has responded favourably to requests from the Secretariat. As already mentioned above, the French Government set up a mission for the restoration and conservation of the Headquarters buildings, making Mr. Belmont available to UNESCO. Furthermore, in his letter addressed to the UNESCO Director-General accompanying the renovation plan for the UNESCO Headquarters buildings, the French Prime Minister requested the Director-General to keep him informed of any measure taken by the UNESCO Executive Board and General Conference on the question of the buildings. Recently, the French Government has confirmed its commitment to the implementation of the first and second phases of the plan by its contribution of total amount of FRF 28.7 million, which will cover costs of emergency work relating to safety and security of the Headquarters buildings, including conference facilities. The contribution will be paid over the period of the 2000-2001 biennium. The French Government has also agreed to partially underwrite the interest that UNESCO will have to disburse for the loan needed to finance the renovation. It is expected that other Member States will follow this example.

51. While the numerous problems of the UNESCO Headquarters buildings are currently far from settled, a lesson could be learned from its case. It should be noted that smooth and effective cooperation was made possible through a concerted effort between the Secretariat, Member States and the host country to find a timely solution to the problem. Although each organization has its history and specificity, a concerted effort such as exemplified by the case of UNESCO could be a prerequisite for successful outcome in this case.

IV. FINANCING OF MAINTENANCE AND CAPITAL EXPENDITURE

52. Financing of repair and improvement works as well as of capital expenditure is a key issue in building management. As was already noted in the 1993 JIU report on the management of buildings in the United Nations system,[18] under-funding of maintenance eventually results in the deterioration of premises and equipment, requiring costly repairs-. Within the framework of this study, the Inspectors carried out a survey on modalities of financing building maintenance, repair and improvement works and capital expenditure. Four specialized agencies are described below for their illustrative good practices in the financing of maintenance and capital expenditure, for comparative purposes with the United Nations.

World Health Organization (WHO)

53. At its twenty-third session held in 1970, the World Health Assembly decided to establish a Real Estate Fund in order to replace a revolving fund for real estate operations.[19] The purpose of the fund is to meet the costs of: (i) maintenance, repairs and alterations to staff housing; (ii) major repairs and alterations to WHO's existing office buildings; (iii) the construction of buildings and extensions to existing buildings; and (iv) the acquisition of land which may be required.

54. The fund is replenished or increased through appropriations by the World Health Assembly from casual income. These appropriations are voted on separately from those for the relevant budget year. WHO officials indicated that good private sector practices in financing building management served as a model for the operation of the Real Estate Fund.

55. From its inception up to 1997, the Real Estate Fund allocated resources amounting to USD 57.8 million for the following purposes:

a) maintenance, repairs and alteration to staff houses (USD 5.8 million);

b) major repairs and other repairs to the Organization's existing buildings (USD 22.4 million); and

c) acquisition of land, construction/extension of buildings (USD 29.6 million).

The status of ongoing and new projects is submitted to the Executive Board for approval on a regular basis.

United Nations Educational, Scientific and Cultural Organization (UNESCO)

56. UNESCO similarly set up a special account the Headquarters Utilization Fund (HQF), which is to accommodate funds and finance activities related to the use of the Headquarters buildings. Issues related to the management of the HQF have been reviewed by the Executive Board on several occasions. Most recently, at its 160th session held in October 2000, the UNESCO Executive Board further clarified criteria for the management of the HQF.

57. Expenditure for maintenance and upkeep, furniture and equipment in offices and meeting rooms, exhibition spaces and facilities is charged against the HQF only to the extent that it

does not derive from providing facilities for the General Conference, the Executive Board and various programmes and staff activities. Staff costs expenditure, including temporary assistance costs incurred in direct relation to (a) income generating activities and services, and (b) administrative and budgetary management of HQF, is charged against the HQF. The HQF is replenished with all receipts from the renting of offices to permanent delegations, observer missions, intergovernmental organizations and other bodies, and all rentals from the lease of meeting rooms, exhibition spaces and facilities, etc. Separate and specific financial regulations have been adopted by the General Conference and the External Auditor reports in respect of the HQF.

World Intellectual Property Organization (WIPO)

58. In 1989, WIPO established the Special Reserve Fund for Additional Premises and Computerization from which the additional premises needed to accommodate the staff and equipment handling the ever-increasing activity of the Fee-financed Unions and the investments needed for fuller computerization of their operations, are financed.

59. WIPO bought WMO's former Headquarters building in 1999. The cost of renovating this building and the construction of new premises are financed from the Special Reserve Fund for Additional Premises and Computerization. The Inspectors were informed that during the 1996-1997 biennium, costs related to the cooperation between WIPO and WTO (CHF 2.2 million), extension of a WIPO building (CHF 4.3 million), and an international architectural competition for new buildings (CHF 0.3 million), were charged to this fund. Budget surpluses are credited to the fund, which totalled CHF 223.8 million as of December 1998. These budget surpluses were the outcome of the expansion of technological inventions registered under the Patent Cooperation Treaty System, coupled with an increase of registration fees.

World Meteorological Organization (WMO)

60. WMO established a special account, the Building Fund, the purpose of which is to finance future requirements, and to pay for the contingency expenditure for the new WMO building in order to maintain its capital value. The proceeds of the previously mentioned building sale (CHF 34.3 million) were credited to this account, and the balance of the Fund amounted to CHF 15.4 million as of December 1999, after partial repayment of outstanding loans on WMO buildings.

61. WMO has also established another special account, a New Building Maintenance Reserve, to supplement funds allocated for the maintenance of the new building under the regular budget. Recently, an amount of CHF 0.5 million was credited to this reserve account, which represents unused rental income.

United Nations

62. The capital master plan (CMP) was prepared by the United Nations Secretariat with the assistance of professional architects and engineers, and was presented to the General Assembly as a report of the Secretary-General.[20] The plan identifies the serious deficiencies of the ageing buildings of the United Nations Headquarters, sets forth possible technical remedies to the problems, informs the Member States of their financial implications and proposes several financial options.

63. The CMP concluded that the continuation of the current "reactive" approach, in which required alterations would be undertaken as and when the need arose over a 25-year period, would cost the Member States USD 1,644 million; it was also the most expensive of the four alternatives proposed in the above-mentioned report of the Secretary-General. It should be noted that the current buildings are not energy-efficient, and, under the reactive approach, the energy costs would amount to USD 490 million over the same 25-year period.

64. Three options are proposed under the CMP. Their duration is different in each case, and ultimately determines the financial implications of each undertaking. In effect, three-year, six-year, and twelve-year plans would cost USD 1,179 million, 1,290 million and 1,421 million respectively, including the costs of emergency work (except in the 3-year option), construction, additions, improvements and swing space, as well as the total 25-year energy cost.

65. Two types of options are proposed for the financing modalities of the capital master plan: (i) cash payment options; and (ii) deferred payment options. The duration of the cash payment option is determined by that of the project. However, in this scenario, large up-front financial outlays would be required from Member States. For example, a six-year plan would require an amount of USD 174 million for each year during the first three years of the project period, and digressive amounts of USD 161 million, 135 million and 101 million respectively for the subsequent years.

66. The three deferred payments options proposed in the plan imply a lesser burden for the Member States. The first option is based on the assumption that Member States would grant interest-free loans covering the full capital cost requirement. The second option is commercial borrowing of the full capital cost requirement, at market rates, including loans guaranteed by Member States, borrowing against the assets of the United Nations, and a bond offering. The third option is a combination of interest-free loans and commercial borrowing.

67. The Inspectors note that the whole plan is well thought out, and that the financing options have been explored in a highly professional way and are all technically viable. Technical issues are clearly explained in a language understandable to non-experts. Nonetheless, according to the ACABQ report, no independent analysis has been undertaken with regard to the reliability of the cost estimates.[21] The Inspectors concur with the ACABQ that the Secretary-General should work out the required measures against possible overexpenditures and describe them in his next report on the CMP.

68. The Inspectors also note that the first report of the Secretary-General on the CMP enumerated the various reasons for the high cost of the proposed undertaking, including: the age of the buildings, their prolonged usage, changing building performance standards and rising user expectations. Despite the efforts made by the Secretariat to remedy the major deficiencies of the United Nations Headquarters buildings, the Inspectors remain of the view that implementation of the CMP is nevertheless required, given the negligence the buildings have been subjected to for such a long period. The negative consequences of such poor management were already pointed out in the 1993 JIU report on the management of buildings in the United Nations system.[22] The Inspectors believe that regular preventive maintenance and pre-maintenance of the installations, services and equipment of the United Nations Headquarters buildings would have lightened the financial burden that might now be placed on Member States. Another shortcoming of the CMP is the absence of an overall budget

policy for building management, encompassing the regular budget and the CMP, as recommended in the present report (cf. **Recommendation 1**).

Patterns of financing modalities

69. The survey carried out by the Inspectors indicates that there is a pattern in the financing modalities for building management projects in the United Nations system organizations studied. This pattern is based on the distinction between maintenance and repair on one hand, and capital expenditure on the other. The distinction derives from the two types of costs incurred in building management, i.e. costs of maintenance and repair work that does not entail a change in the book value of the buildings, and those of value-adding capital expenditure.

70. The pattern of financing modalities indicates that maintenance and repair work is financed by cash payment, principally through the regular budget, and occasionally through special account arrangements. Capital expenditure for major improvements and construction is either financed by cash payment based on special account arrangements, by deferred payment, i.e. loans from a quasi-governmental organization or commercial borrowing repaid from the regular budget, or by a combination of the two methods. Based on the pattern, it seems appropriate to conclude that:
- ordinary maintenance and repair work not entailing a change in the book value of buildings should be funded under the regular budget on a regular basis, or through special account arrangements if cash is available; and
- extraordinary work, such as construction or major improvements entailing a change in the book value should be financed through special account arrangements in case of cash availability, or by deferred payment.

71. Financing maintenance and repair works as well as capital expenditure through special account arrangements, as reported above, is a widespread practice in the United Nations system. The Inspectors are aware of the concern that special accounts create an exception to budgetary standards and discipline. Such special accounts are in fact not subject to the budgetary periodicity, and leave room for loose control over the efficiency, effectiveness and timeliness of project implementation. Furthermore, under the special account regime, resources made available by Member States might remain unused for a longer period than a biennium.

Need for an institutional financial framework for handling substantive capital expenditures

72. The experience of United Nations system organizations, including the United Nations, indicates the need for an institutionalized financial framework to handle substantive capital expenditure with which the biennial, regular programme budgets cannot cope. Some organizations have accumulated valuable experience in the operation of special accounts such as the Building Fund or the Real Estate Fund.

73. The Inspectors note that in response to the above mentioned inherent shortcomings of the special account regime, the United Nations system organizations having opted to establish these funds have addressed concerns over the risks involved through strict application of general or specific financial rules and regulations. These stipulate criteria for disbursement and implementation of work plans in line with principles of budgetary and financial discipline.

74. In the Inspectors' view, the United Nations should consider the feasibility of following the practice of United Nations system organizations which operate special building management accounts replenished from a mixture of sources (for example annual contributions, budgetary surpluses, miscellaneous income, rental income), and set up one of its own. They believe that this is a viable long-term option which ensures the financial basis for preventive building management. The General Assembly should request the Secretary-General to prepare a feasibility study for establishing a fund for the sole purpose of covering the costs of major repair, renovation, upgrading and replacement of equipment. (see **Recommendation 5**).

V. RATIONAL USE OF OFFICE SPACE BY ORGANIZATIONAL UNITS OF THE SECRETARIAT

A. Use of modern management tools

Current indirect technique of programme cost budgeting for building management

75. The ongoing process of reform and modernization in the United Nations Secretariat should also be applied to building management. The Inspectors noted that in most of the organizations they visited or contacted, senior and middle level programme managers are not fully aware of the financial implications of building maintenance and office space allocation. This constitutes a major drawback: it means that the financial aspect is not taken into account in the decision-making process, which can lead to cost-ineffective use of office space and unnecessary extensions of premises.

76. Another negative consequence of the poor cost-awareness in building management and use of office space is that the regular budget subsidizes extrabudgetary activities by accommodating extrabudgetary staff in offices where maintenance is financed from the regular budget. In the current environment of budgetary constraints, resources made available under the regular budget are becoming scarce; furthermore, current programme support cost arrangements do not allow full recovery of indirect costs incurred under the regular budget for extrabudgetary activities. Therefore, awareness of financial implications of building management is a critical element, not only in building management properly speaking, but also in the management of regular budget resources in general.

77. Consequently, the Inspectors believe that due attention needs to be paid to the cost implications of building management and use of office space. To this effect, a cost measurement system for buildings maintenance and office allocation should be developed, based on the idea that office space is not free, but should be considered as a scarce resource to be used optimally.

78. Currently, the United Nations and most of the United Nations system organizations make a budgetary estimate for maintenance and repairs of their premises under a single budget section, separate from the other budget sections for substantive programmes. The costs of maintenance and repairs of premises, as well as other indirect costs such as general operating costs, are not apportioned among the substantive programmes. This method is not transparent since, typically, a budget document does not show the total costs of programmes including indirect costs: it only shows direct programme costs separate from aggregate amounts of indirect costs. The Inspectors are aware that in the United Nations system organizations, activity based budgeting with full costing of each substantive programme activity is not in use, unlike in the private sector; and that linking such a full costing method to the current budgeting techniques would require a highly complex operation within their budgeting and accounting systems. However, the lack of transparency could be overcome through an adequate cost measurement system, which apportions indirect costs, including costs of building management and office use, over relevant substantive programmes, as additional statistical information to facilitate budget review. Currently, similar ancillary statistical information is already provided as workload statistics in the United Nations programme budget document.

Experiences of UPU and ITU with a cost measurement system

79. UPU and ITU apportion maintenance and repair costs, as well as other indirect costs to programmes, for cost recovery purposes. For instance, UPU's translation services in some languages such as Spanish, Russian and Portuguese, are financed from voluntary contributions. Given that these translators work on UPU premises, the UPU Secretariat apportions indirect costs for building maintenance and repair, as well as other general operating costs to these translation services, in order to recover the costs.

80. ITU applies a similar methodology for cost apportionment and recovery purposes at the corporate level. This cost apportionment policy is based on principles such as:

a) equitable distribution of a service among all activities concerned;

b) the greatest consistency and reliability possible in the costs being distributed;

c) transparency of the allocation process; and

d) sufficient flexibility to permit application to new products/services.

Need for a cost measurement system for building management

81. In the area of building management, cost apportionment is a good method to rationalize the use of resources for building management: it enhances programme managers' awareness of such indirect costs. The apportionment of building management does not require complicated financial operations, thanks to off-the-shelf software applications designed for this purpose. These have a wide range of functions for managing and measuring the costs of office space. They often also cover the management of equipment (inventory and maintenance requirements). By combining various functions, these software applications are able to perform complex operations time-effectively and with far fewer human resources. The Inspectors are informed that such software applications for building management are already in use in a number of United Nations system organizations, including the United Nations. It seems essential that the United Nations should use modern information technology more effectively, in particular to provide cost implications of building management to senior management and other programme managers for their use in decision-making. In addition, the use of information technology coupled with well-defined outsourcing would result in a reduction in building management costs.

82. For these reasons, the Secretary-General should report to the General Assembly on the feasibility of systematizing the use of modern management tools such as information technology, in managing the organization's built assets, and introducing a cost measurement system that measures operating costs of office space by organizational units of the Secretariat (see **Recommendation 6**).

B. Using capital expenditure projects as an opportunity to review and enforce standards for office space allocation

Allocation of office space at United Nations Headquarters

83. The Inspectors are left with the impression that the practice of office space allocation at Headquarters is irrational. Senior officials tend to acquire additional office space. Programme managers prefer to stay within the main Headquarters building, which necessitates providing incentives in the form of more generous office space, to those organizational units that move out of the main building. Such irrational use of office space results in overcrowding, implying poor working conditions on one hand, and large, half-empty offices that waste resources on the other. As referred to in the 1992 JIU report on the utilization of office accommodation at United Nations Headquarters,[23] disputes on office accommodation due to the poor working conditions are often time-consuming and disturb the course of working operations, resulting in wasted resources.

84. The Inspectors are informed by United Nations Headquarters officials that office space standards are not systematically applied. Organizational units of the United Nations Secretariat are scattered among different buildings designed to different standards. Different designs of office space and facilities make it difficult to apply a single standard.

Irrational use of office space in United Nations system organizations

85. The trend towards the irrational use of office space is observed in other United Nations system organizations. A number of organizations, e.g. FAO, ITU, UNESCO, WHO and WIPO, have several differently designed buildings. ITU officials indicated to the Inspectors that the whole complex of the ITU buildings is a patchwork, progressively expanded by adding one building to another, resulting in a variety of architectural designs which makes difficult to enforce uniform office space standards. WHO has experienced the same problems in the past, and, because of the expansion of its activities, the problem is expected to continue. However, in 1994, WHO management elaborated and enforced revised standards on the rational use of office space, and recently revised them again.

Recent decision by the UNESCO Executive Board for the rationalization of Headquarters building management

86. The Headquarters Committee of UNESCO has been undertaking an in-depth and exhaustive examination of ways in which to rationalize the management of the UNESCO Headquarters premises. In this connection, the Director-General of UNESCO recently submitted a report prepared in cooperation with the Headquarters Committee, addressing issues of rental charges for offices of the Permanent Delegations, conference and exhibition rooms and areas for outside users; as well as issues relating to rental rates for the use of parking places by Permanent Delegations and staff members of the Secretariat.

87. At its 157th session, the UNESCO Executive Board approved the following, as temporary measures with effect from January 2000: (a) a new system for the rental of office space in a UNESCO building; (b) an increase in the rate for parking places; and (c) new rates for the use of conference and exhibition rooms and areas used by outside users.[24] While this decision is not directly linked to the project for renovating the UNESCO Headquarters building, the

Inspectors believe that carrying out the comprehensive review of building management currently underway alongside the renovation project, is good management practice which creates synergy among all involved in the various aspects of building management.

Refurbishing work at United Nations Headquarters as a unique opportunity to revisit and improve office space management

88. The Inspectors are of the view that the refurbishing work at United Nations Headquarters presents a unique opportunity to revisit and improve office space management in the whole Organization, and at Headquarters in particular. Software applications currently in use at United Nations Headquarters will greatly facilitate the task of reviewing the situation. In order to achieve efficiency and economy in office space management, and to provide acceptable working conditions for the staff of the United Nations Secretariat, the Secretary-General should review:

a) standards for the utilization of office space;

b) occupancy of space by non-Secretariat units;

c) rental charges applied and their rationale; and

d) current and projected office space requirements.

89. In the context of the capital master plan, the Secretary-General should report on office space management, indicating the need for any eventual changes in office space standards (see **Recommendation 7**).

90. The Secretary-General should revise and enforce norms and standards for office space allocation at United Nations Headquarters and other duty stations in order to avoid discrimination and disputes (see **Recommendation 8**).

Annex

SUMMARY OF THE STATUS OF BUILDING MANAGEMENT IN SELECTED UNITED NATIONS SYSTEM ORGANIZATIONS

This annex was provided to the United Nations Secretariat on 1 December 2000 for information purposes, and is reflected in General Assembly document A/55/117/Add.1 of 13 December 2000.

FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED NATIONS (FAO)

Legal status of properties and related issues: The FAO buildings are the property of the Italian Government, held in usufruct by FAO under extra-territorial status. They are rented by FAO for a symbolic ITL 1 a year. The rights and obligations of the host country and FAO were most recently spelt out in a 1990 letter which complements the headquarters agreement. This clearly states that when FAO needs additional space outside its compound, the host country pays for the rent.

Financing of capital improvements, repairs and construction: All FAO's major expenses are paid directly by the Italian government. The organization thus does not need to build up reserves to cover the cost of major improvement and repair works. On the other hand, ordinary day-to-day maintenance is encountering problems of financing due to diminishing resources. In response to this, the government and the private sector have made extrabudgetary contributions on an exceptional basis, to cover the costs of some of the works. For instance, FAO is presently building a hall linking two of its buildings with contributions from marble companies; and in exchange for the permission to install inconspicuous relay antenna on the FAO buildings, telecommunications companies are also providing some financing. The organization has not taken out any loans for building maintenance.

Property management: There is no integrated management information system for building management: the Administrative Services Division uses Excel and other standard software. It plans to purchase more sophisticated software that integrates spreadsheets and graphics in the near future. All maintenance is outsourced to an external firm. The buildings are well maintained. Currently, there is no asbestos problem, although it has been detected and treated in one or two instances. In addition, the Ministry of Public Works will allocate USD 10 million to renovate the library. With regard to safety norms and inspections, FAO abides by Italian standards, which follow European standards.

Concerning space management, existing guidelines for the allocation of office space comply with general United Nations standards. The Infrastructure Service of the Administrative Services Division is responsible for building management. In 1994-1995, the division had 352 staff and a budget of ITL 36.7 billion. In 2000, however, resources have been reduced to 174 staff and ITL 28 billion. The division is divided into four Services, including the Infrastructure Service, which has a Chief (D-1), one Deputy (P-5), two engineers and two architects. There are also two technicians for each field of maintenance (electricity, plumbing, etc.), who serve mainly to liase with the private companies to whom maintenance has been outsourced.

INTERNATIONAL LABOUR ORGANIZATION (ILO)

Legal status of properties and related issues: ILO owns its Headquarters building and the land on which it is located. The building is 25 years old.

Financing of capital improvements, repairs and construction: ILO has a Building Accommodation Fund (BAF), which is a small fund financed mainly from office rentals. It pays for unforeseen and urgent repairs not covered by the regular budget. The BAF also contributed to the financing of construction works for ILO field offices in Cote d'Ivoire, Pakistan and Brazil.

Property management: ILO uses an information system for buildings called Building Management System, which is a module-based software package developed by an external firm. This system was introduced initially to manage a wiring system used for the LAN, but was expanded at a later stage to the management of buildings, in order to regulate room temperature and handle the logistical aspects of office space allocation. The Secretariat has developed a partnership with a number of contractors in the area of building management. Budgetary provisions for outsourced building management activities amount to 80% of the total programme costs for building management (i.e. excluding staff costs). ILO does not use a cost accounting system which breaks down and apportions costs of building management to different programmes. The budgetary provisions for maintenance are 15 per cent higher than those for renovation.

INTERNATIONAL TELECOMMUNICATION UNION (ITU)

Legal status of properties and related issues: ITU is the owner of the Headquarters buildings and has the enjoyment of superficies, while the land belongs to the Swiss Government. The design and construction of the most recent building were awarded to an architect and to a general contractor respectively – and in both cases through International competitive bidding. The cost estimates of the new building were reviewed in detail by a commission established within the Secretariat, and subsequently approved by governing bodies.

Financing of capital improvements, repairs and construction: In the past, ITU managed to allocate sufficient resources for building management, and construction projects such as a new cafeteria and a new building. The *Fondation des immeubles pour les organisations internationales* (FIPOI), a Swiss federal institution in charge of buildings and premises of international organizations based in Switzerland, granted interest-free loans to ITU in order to finance the above-mentioned construction projects. In particular, FIPOI granted the ITU an interest-free loan of CHF 49 million, reimbursable over a period of 50 years, for the construction of the most recent building. The loan reimbursement is financed through the regular budget. The Governing Body and management of the ITU Secretariat have approved the allocation of sufficient resources for building construction and maintenance. These have been reduced due to budgetary constraints, though this had not had a major impact on the actual building management operations. The organization has prepared a financial plan for building maintenance for the period 2000-2007, which will be presented to the Council of Administration for its review and approval. This demonstrates that ITU has already put in place a long-term planning system for maintenance work. Furthermore, there is a fund called

"maintenance fund" (*fond d'entretien*), which finance maintenance work. This fund is financed by annual instalments of CHF 750,000 from the regular budget. However, the ITU has indicated that this amount is not sufficient to cover even the most urgent needs. This is due to the cumulative effect of insufficient maintenance, for the sake of budget "savings", over many years. Resources from the Reserve Account, which is financed from the budget surpluses, may therefore be designated by the ITU Council to complement the maintenance fund.

Property management: The ITU Council adopted a resolution requesting the Secretariat to comply with legal provisions of the host country with regard to the norms and standards for buildings, including those on safety and security. ITU has no management information system used for building management. Cleaning of the buildings is totally outsourced. The ITU has recognized the importnace of energy costs (heating, air-conditioning, etc.), because those costs constitute a critical factors for substantive and financial management of buildings. There is a cost accounting system, which apportions overhead costs, including costs of building management, over all major programmes.

Asbestos was used in the old buildings of the ITU. In 1997, a specialized private firm removed it at the request of the Secretariat. ITU is not using any standard parameter to determine the level of resources to be allocated for maintenance of buildings. Instead, the resources are justified based on a thorough review of requirements (from scratch).

Regarding space management, the whole complex is a patchwork progressively expanded by adding one building to another, resulting in different types of architectural design of office space. This is the reason why it is difficult to apply the same service norms and the same standards for office space allocation in ITU as a whole. However, an indicative standard is established at 7 square meters, at minimum, per person. The organizational unit handling issues related to maintenance and repairs of the ITU buildings is headed by a D-1 post, and staffed by a P-4 post (an architect) and two G-7 posts.

UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES (UNHCR)

Legal status of properties and related issues: UNHCR's current building is not the property of UNHCR, but of FIPOI, the *Fondation pour les Immeubles des Organizations Internationales*. UNHCR is responsible for the supervision of the building. The supervisor would welcome closer coordination with other UN entities in the field of building management.

Financing of capital improvements, repairs and construction: The rental paid to the ***Fondation des immeubles pour les organisations internationales*** (FIPOI) is financed through voluntary contributions to UNHCR's annual budget. The rental, according to the Swiss practice also includes a percentage for renovation.

Property management: There is no official policy for building management. Some building management functions are outsourced under the supervision of a staff member who is an architect. The supervisor (architect) works closely and informally with the Swiss authorities concerning safety and other matters. Since UNHCR is an international organization, local rules do not always apply to it. Currently, the organization has problems related to office space allocation. When the agreement with the host country was signed, UNHCR staff at

headquarters totalled 350, but have since then increased to the current staff level of 900. Originally, the building was also meant to be shared with other international organizations. However, by the time it was completed it turned out not to be sufficient even to accommodate UNHCR staff, due to the increase in the activities of the organization. UNHCR therefore has to rent offices and additional space for workshops in commercial buildings. Currently, there are about 90 people on each floor. The only existing policy for office allocation is the standard based on post grades. The Building Service Unit has one P-4 and 13 GS staff, and two technicians provided by FIPOI who are under the direct supervision of the UNHCR architect.

UNITED NATIONS INDUSTRIAL DEVELOPMENT ORGANIZATION (UNIDO)

Legal status of properties and related issues: The Vienna International Centre and the land on which it is located are the property of the Austrian Government.

Financing of capital improvements, repairs and construction: Building management costs in Vienna International Centre (VIC) are shared according to a formula which takes into account the number of staff and the space occupied by each organization. The ratios for 2000 are as follows:
(i) International Atomic Energy Agency (IAEA): 51.65 per cent;
(ii) United Nations Office at Vienna (UNOV): 22.78 per cent;
(iii) UNIDO: 18.1 per cent; and
(iv) Comprehensive Nuclear-Test-Ban Treaty Organization (CTBTO): 7.47 per cent.

For 2000, building management requirements were financed from three different funds:
(i) the regular budget, amounting to USD 17.5 million, including USD 6 million for utilities;
(ii) the essential requirements programme, amounting to USD 2.6 million; and
(iii) the Major Repair and Replacement Fund, amounting to USD 1.9 million, to which the Austrian Government contributes the amount of approximately USD 930,000.
Furthermore, additional projects worth approximately USD 2 million per annum have to be implemented outside the cost sharing agreement and are fully financed by various Vienna International Center-based organizations.

Property management: UNIDO provides building management-related services to the other three international organizations based in the Centre, the IAEA, the UNOV and the CTBTO. The Building Management (BMS) of UNIDO is responsible for providing the service and is located in the Office of the Director-General. The management, bookkeeping and recording of office space is the responsibility of BMS, whereas the allocation of space within each organization rests with the associated General Services Departments of the VIC-based organizations, each of which has its own standards for office space allocation.

WORLD FOOD PROGRAMME (WFP)

Legal status of properties and related issues: The rental of the building, which belongs to a private company, amounts to approximately ITL 7 billion per annum, and is entirely reimbursed to WFP by the Italian Government. All obligations and rights are governed by the headquarters agreement.

Financing of capital improvements, repairs and construction: A biennial system is deemed suitable to cover the ordinary maintenance and expenses, while unforeseen emergencies are taken care of within budgetary resources.

Property management: Guidelines for the preventive maintenance of the building and for a monitoring and inspection system are contained in the terms of reference for the general maintenance contractor, document 027/98MSA-09. Guidelines for cleaning services are contained in the terms of reference of document 019/98MSA-05.

The building was extensively refurbished in early 1998 when WFP moved into the premises, and all alterations to meet the Programme's needs were implemented at that time. Only minor expenditure for alteration has been made since then, related to the extra space required by the ongoing management information system projects and special events. The following tasks and services concerning building maintenance are outsourced: cleaning, gardening and waste disposal; electrical and mechanical systems; elevators; and the security system. The main additions made over the past two years include: institutional signs (USD 60,000), external cafeteria roofing (USD 30,000), a fire escape gangway (USD 18,000), safety improvements for elevators (USD 27,000), motorized garage gates (USD 10,000) and a motorbike shed (USD 7,000).

Where space management is concerned, entitlements follow basic criteria established by United Nations system organizations (IFAD, ILO, IMO, UNIDO and FAO). Space apportionment to staff is based on an open-space concept, with the exception of division managers who are entitled to private offices. Furniture is in line with international ergonomic regulations. The office responsible for the building management provides all the services needed to ensure physical comfort and aesthetic surroundings for staff and visitors to Headquarters.

WORLD HEALTH ORGANIZATION (WHO)

Financing of capital improvements, repairs and construction: The existing Real Estate Fund (REF) is managed in accordance with the WHO Financial Regulations and Rules. No policy has been established for financing construction, improvements and repairs, or building management in general, but a policy is thought to be needed for WHO. There are no specific regulations and rules enacted for the financial management of REF. The prevailing opinion is that private sector practice in financing building management would be a model. From the time it was established until 1997, the REF allocated resources totalling USD 57.8 million for the following purposes: maintenance, repairs and alteration to staff houses (USD 5.8 million); major and minor repairs to the Organization's existing buildings (USD 22.4 million); and acquisition of land, construction/extension of buildings (USD 29.6 million). The status of on-going and new projects is reported and submitted to the Executive Board for approval on a regular basis.

Property management: WHO does both reactive and preventive maintenance of technical installations and buildings. The staff interviewed indicated that routine maintenance does not require major resources. As a management information system, WHO uses a software package for office space management which is an integrated applications module for facilities management used by several international organizations, such as the United Nations and WIPO. This software facilitates several building management functions by keeping track of

staff locations, office equipment, furniture, technical installations, cables, etc. The agency has found these software modules very useful. The WHO Secretariat has not developed a cost accounting system for identifying actual costs of building management. It charges rent to external organizations such as UNAIDS on a per square metre basis including charges. Internally, actual costs for building management (repairs, improvements, maintenance etc) are not broken down by programme, nor by organizational unit.

Where space management is concerned, WHO Headquarters will be short of office space by additional 200 office modules in the future. In the long term, the problem will only be alleviated by the construction of a new building. The current policy on the distribution of Headquarters office space dates back to 1994, and was designed to make the best use of the existing office space so as not to build new premises until 2000. Due to new requirements originating from the recent restructuring, a new standard was introduced in July 2000.

WORLD INTELLECTUAL PROPERTY ORGANIZATION (WIPO)

Legal status of properties: WIPO has four buildings (the Arpad Bogsch building, the Georg Bodenhausen I and II buildings, and the former WMO building) under its ownership. The Swiss Government owns the land on which the buildings are located but WIPO is exempted from paying ground rent since January 1997.

Financing of capital improvements, repairs and construction: The budget includes provisions for maintenance and modernization of the existing premises, facilities and equipment. The cost of renovating the former WMO building and the construction of new premises are financed from the Special Reserve Fund for Additional Premises and Computerization that was set up in 1989 specifically for such purposes. Budget surpluses for the Patent Cooperation Treaty Union, the Madrid Union and the Hague Union from 1990-1991 to 1998-1999, were paid into this fund. The fund's balance amounted to CHF 236.9 million as of December 1999. The organization was granted two loans from FIPOI - for the construction of the Arpad Bogsch Building and the renovation and enlargement of the Georg Bodenhausen I Building - which are to be repaid over the periods 1979-2028 and 1990-2039 respectively. The Swiss Confederation decided not to charge any interest on the loans, effective January 1996. Extraordinary maintenance is outsourced to external enterprises. Budgets in the past have not foreseen any specialized staff for short-term technical work. Budgetary provisions are foreseen only for those technical staff and programmes that were essential for ordinary maintenance works. An "audit" of the technical installations was outsourced and carried out by an external expert, on the initiative of the Secretariat. WIPO rents office space in six buildings scattered around Geneva (*Centre administrative des Morillons*, *Fondation du centre international de Genève*, Union Carbide/UNHCR, International Business Machines, Procter and Gamble, and Sogival buildings), and parking spaces in those rented buildings as well as in the *Parking des Nations*; it also rents storage space in two depots (Collex and Meyrin). WIPO also rents office space in the United Nations DC 2 Building in New York. The acquisition of the former WMO building and the construction of new premises will result in a savings in rent, as well as in a better working environment achieved by bringing the staff together in the vicinity of the premises owned by WIPO. In replacing the elevators in the Arpad Bogsch Building, modern equipment and software were chosen for better performance and lower maintenance costs.

Property management: WIPO has maintained a reasonable level of resources for maintenance of its premises, in order to prevent problems requiring major

maintenance/improvement and to ensure optimal conditions in terms of working environment for government representatives, its staff and the public. Even during the early 1980s when WIPO faced serious financial problems due to inflation and the strong United States dollar, budgetary provisions for maintenance of premises were continued. WIPO officials confirmed that all the premises comply with the health and safety rules stipulated by Swiss law, and that there is no asbestos problem. They also pointed out that the budget is based upon expected requirements. In this connection, the WIPO Secretariat did not consider maintenance-to-cost ratios to be useful.

WORLD METEOROLOGICAL ORGANIZATION (WMO)

Legal status of properties and related issues: The WMO building is the property of the organization while the land belongs to the Swiss government.

Financing of capital improvements, repairs and construction: WMO established a special fund–called the Building Fund–to finance future requirements and to pay for the contingency expenditure necessary to maintain the capital value of the new Headquarters building. Part of the income from rent is used for financing building maintenance. Tenants also pay for the cost of utilities in proportion to occupied space. The offices on two floors are rented furnished and the furniture is depreciated over 8 years. The total cost of the new building amounts to about CHF 100 million. WMO obtained an interest-free loan of CHF 75 million from FIPOI, which is to be repaid over a period of 50 years, and financed from the regular budget. The balance was financed from the proceeds of the sale of the former WMO building to WIPO. Should WMO rent more than 30 per cent of its total office space (i.e. more than two floors of offices) to third parties with no functional relations with WMO, the loan reimbursement procedure may be reconsidered by common agreement between WMO and FIPOI. All overhead costs are included in the loan.

Property management: Maintenance falls totally under the responsibility of WMO. The Common Services Division is responsible for building management. There is a separate building management unit within it, which is presently composed of the Chief, Building Maintenance Unit, a P-4 post, and one Maintenance Technician, a G-6 post. The sum of CHF 4.2 million is allocated for maintenance under the regular budget. In addition, the organization's annual income from rent amounts to CHF 1.1 million.

Notes

[1] A/49/560 of 20 October 1994.

[2] A/50/753 of 13 November 1995, paras. 2, 4 and 5.

[3] A/55/117.

[4] Documents A/9854 and A/10279.

[5] A/9854.

[6] A/31/8/Add.4, para. 11.

[7] A/10279.

[8] A/49/560.

[9] Ibid.

[10] See footnote 2.

[11] Agreement between the Government of the French Republic and UNESCO regarding the Headquarters of the United Nations Educational, Scientific and Cultural Organization (UNESCO) and the Privileges and Immunities of the Organization on French Territory, article 5.

[12] A/55/117, para. 32.

[13] A/55/7Add.4, para. 6.

[14] A/55/7/Add.1.

[15] JIU/REP/97/5, paras. 39-46.

[16] UNESCO General Conference resolution 76 *Managing the UNESCO complex: Report by the Director-General and report of the Headquarters Committee*, adopted at its 30th session date?.

[17] UNESCO General Conference document 30 C/40, part II, para. 3.

[18] JIU/REP/92/9.

[19] World Health Assembly resolution WHA23.14.

[20] See footnote 3.

[21] A/55/7/Add.1, para. 5.

[22] See footnote 8.

[23] A/9854, para. 120.

[24] Executive Board decision 8.9.